Vol. III

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 314

WICHITA ROYALTY COMPANY ET AL.,
PETITIONERS,

vs.

CITY NATIONAL BANK OF WICHITA FALLS ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 30, 1938.

CERTIORARI GRANTED OCTOBER 17, 1938.

PLAINTIFF'S EXHIBIT 199.

No. 13665.

Treasury Department.

Office of Comptroller of The Currency.

Washington, D. C. March 15, 1933.

Whereas, by satisfactory evidence presented to the undersigned, it has been made to appear that "City National Bank In Wichita Falls" in the City of Wichita Falls in the County of Wichita and State of
1527 Texas has complied with all the provisions of the Statutes of the United States, required to be complied with before an association shall be authorized to commence the business of Banking;

Now, Therefore, I, F. G. Awalt, Acting comptroller of the Currency, do hereby certify that "City National Bank in Wichita Falls" in the City of Wichita Falls, in the County of Wichita and state of Texas is authorized to commence the business of Banking as provided in Section Fifty one hundred and sixty nine of the Revised Statutes of the United States.

In Testimony Whereof witness my hand and seal of office this Fifteenth day of March, 1933.

(Signed) F. G. AWALT,

(Seal) Acting Comptroller of the Currency.

The Witness:

There has been offered in evidence a contract between the City National Bank in Wichita Falls and the City National Bank of Wichita Falls, for certain assets of the old bank transferred to the new bank, and certain deposits liabilities were assumed by the new bank—I am familiar

with that transaction; that transaction had the approval of the United States Department of Banking, the Treasury Department. Plaintiff's Exhibit 199 is the charter certificate of incorporation, which has been offered in evidence.

1528 E. A. DEATON, a witness for the plaintiff, being first duly sworn, examined in chief by Mr. Humphrey, testified as follows:

My name is E. A. Deaton. I am liquidating agent of what is commonly known as the old bank, City National Bank of Wichita Falls, and have been since January, 1935. I succeeded C. E. Basham. During my term I have been endeavoring to orderly liquidate the affairs of the City National Bank of Wichita Falls. Prior to that time I worked under Mr. Basham during his ten years in office. I handled many of the matters pertaining to the liquidation of the City National Bank of Wichita Falls, prior to Mr. Basham's resignation as liquidating agent. I was an employee of the City National Bank at the time it went into voluntary liquidation, I was a sort of a trouble shooter, looking after real estate and some outside work, collections, etc. I have lived in Wichita Falls nineteen years.

I took this deposit slip, of George Peckham's January 17, 1923, Wichita Royalty Company, $1,000.00, interest $40.00. I have no independent recollection of this particular deposit slip, all I know is the recitals on the instruments. It indicates the payment of the note by the Wichita Royalty Company, of $1,000.00 with interest, $40.00, proceeds of which were placed to the credit of George W. Peckham. I have another deposit slip here,
1529 it shows Wichita Royalty Company, payment of $1,000.00 with interest of $46.66, which went to the credit of George W. Peckham. I took that also and gave Mr. Peckham credit for these respective

amounts on the deposit slip of January 17, 1923, and January 21, 1923. I was a teller at that time.

Mr. Humphrey:

We offer the two deposit slips in evidence marked "Plaintiff's Exhibits 200 and 201" as follows:

PLAINTIFF'S EXHIBIT 200.

Deposited with City National Bank of Commerce, Wichita Falls, Tex by Geo W. Peckham Jan 17, 1923 checks as follows:

Wichita Royalty Co. Note		1,000.00
Int		40.00
"17"		
Per D	Total	1,040.00

PLAINTIFF'S EXHIBIT 201.

Deposited with City National Bank of Commerce, Wichita Falls, Tex by Geo W. Peckham 2/21 1923 checks as follows:

Wichita Roy Co.		$1,000.00
Int		46.66
"17"		
Per D	Total	$1,046.66

1530 The Witness:

I knew George Peckham during his lifetime. I think his reputation for honor and integrity at the time of his death was good. At the time I took these deposit slips I did not know, or have any suspicion that George Peckham was wrongfully diverting or misusing the funds of the Wichita Royalty Company.

As liquidating agent of the City National Bank, I have a statement of the ledger liabilities of the City National Bank of Wichita Falls, February 18, 1937, which shows that the City National Bank of Wichita Falls owed $184,000.00 to the City National Bank in Wichita Falls, on what is known as the Deficiency note. And another item of $2,744.36, which is only a contingent liability; being a contingent liability on some notes that were sold with the repurchase agreement or guarantee by the bank. The $2,744.30 is a ledger liability and a corresponding asset and liability. Except for those two items, the books and records of the City National Bank do not show any other liability, except to the stockholders. I know of other claimed liabilities not carried on the books, one of which is the Zenith Oil Company claim for damages that are pending in Court, and this claim of the Wichita Royalty Company. Aside from its contingent liabilities and the ledger liabilities, I do not know of any other claim against the City National Bank of Wichita Falls. This is a daily financial sheet which shows the balance, it is a take off of the ledger balance sheet.

Mr. Humphrey:

We offer it in evidence, Plaintiff's Ex. 202.

P.E. #202

CITY NATIONAL BANK

of WICHITA FALLS, TEXAS

DAILY FINANCIAL STATEMENT

DATE FEB 19 1937

DUE FROM BANKS		**DEPOSITS**	
Federal Reserve Bank Dallas		Individual	
BANKERS & TRUST CO.'S		Due U. S. Govt.—2c Tax	
Amarillo National Amarillo		Demand Certs. of	
Cont. Ill. Nat.Bk.&Tr.Co. Chicago		War Loan Deposit	
First Natl. in Dallas Dallas		Cashier's Checks	
Mercantile National Dallas		Cert. Checks & Letters of Cr.	
Rep. Nat. Bk. & Tr. Co. Dallas		Expense Checks	
Fort Worth National Ft. Worth		Dividend Checks Outstanding	
City National Galveston		Banks, Bankers & Trust Co.'s	
First National Henrietta		Due Federal Reserve, Dallas	
City National Houston		Transit Account	
Union National Kansas City		City Bank Overdrafts	
Citizens National Lubbock		**TOTAL DEMAND DEPOSITS**	
National City New York		Time Certs. of	
Liberty National Okla. City		Savings Accounts	
First National St. Louis		Postal Savings	
National Bank of Tulsa Tulsa		Time—Open Account	
		Personal Savings	
		TOTAL TIME DEPOSITS	
		TOTAL DEPOSITS	
		CAPITAL STOCK	1,000000 00
CASH--DUE FROM BANK,	1,78997	**SURPLUS**	
		UNDIVIDED PROFITS	
TRANSIT ITEMS		Reserved for Taxes, Accrued	
Transit Account		Reserved for Interest, Accrued	
P. M. Clearings		Re-Discounts Federal Reserve	
Country Bank Overdrafts		Bills Payable	184,000 00
Other Cash Items		Customers' Bonds	
CASH IN VAULTS		Travelers Checks	
		Other Liabilities	2,744 36
		TOTAL LIABILITIES	1,186,744 36
TOTAL CASH & EXCHANGE		**GROSS EARNINGS:**	
		Interest and Discount	4,549 82
SECONDARY RESERVES		Exchange	
U. S. Government Securities		Other Earnings	609 49
Bonds—Secure Postal Savings		Recoveries on Charged-off Assets	815 53
Bond Premium and Interest			5,974 84
Other Bonds, Stocks & Securities	1 00	**EXPENSES PAID:**	
Claims, Warrants, Etc.		Salaries and Wages	300 00
		Int. & Dis. on Borrowed Money	
		Interest on Deposits	
LOANS AND DISCOUNTS		Taxes	2,411 52
Bills Receivable	451,598 71	Other Expenses	386 34
Personal Loans			3,097 86
Trade Acceptances		**LOSSES CHARGED OFF:**	
		Loans and Discounts	4,207 84
INVESTMENTS		Other Losses	
Federal Reserve Bank Stock			4,207 84
Bank Building			7,305 70
Furniture and Fixtures		**NET to UNDIVIDED PROFITS**	1,330 86
Other Real Estate	110,882 60		
Royalties—Leases		Yesterday's Deposits	
Other Assets	6,401 89	Loss-Gain	
Customer's Bonds		Today's Deposits	
Travelers Checks			
DEFICIT - U/P	616,070 43	Reserve Required	
TOTAL RESOURCES	1,186,744 36	Excess-Deficiency	

1329

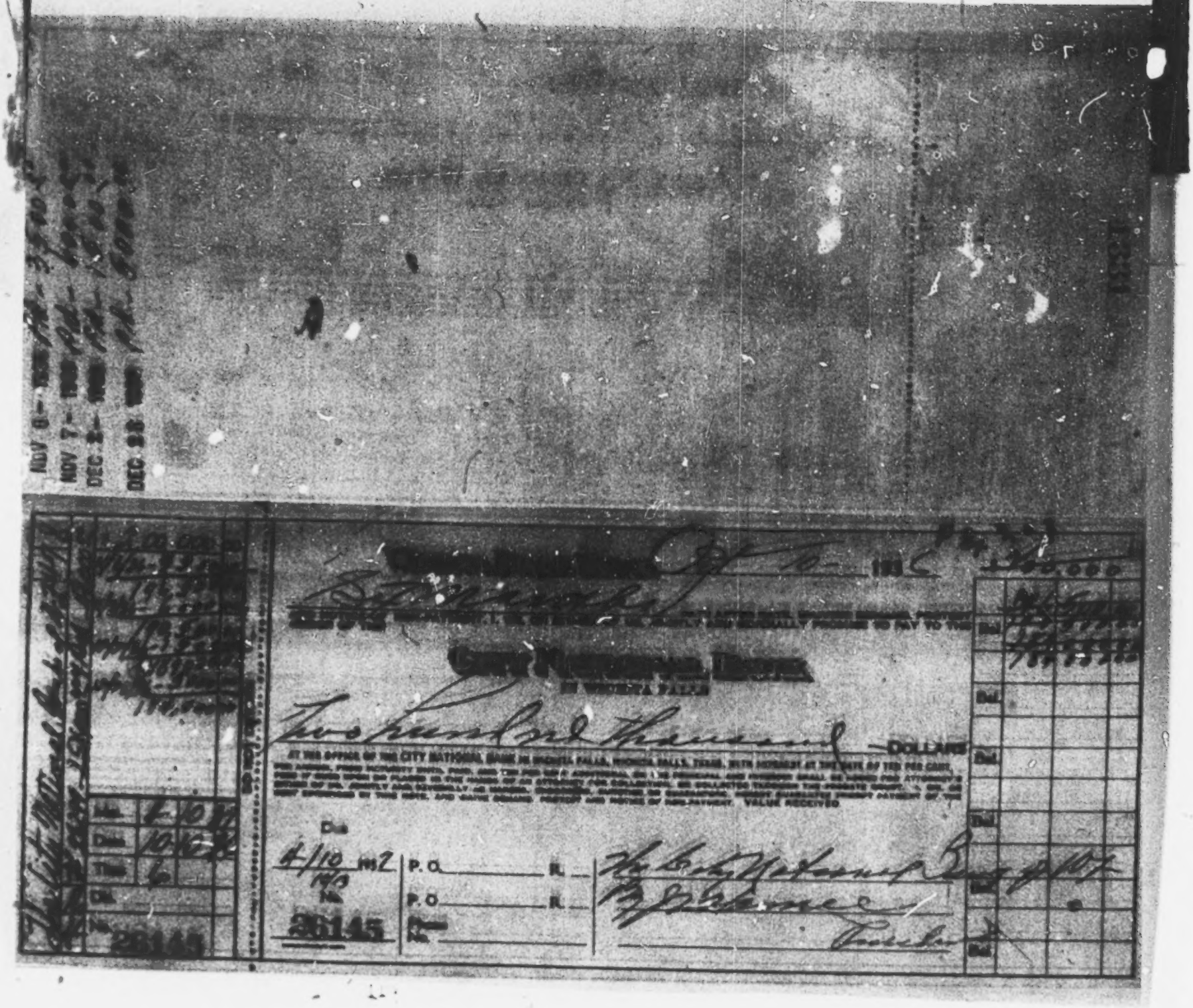
1532 The Witness:

Of course, it shows the book value of the assets. The instrument which you hand me, dated October 10, 1936, signed by the City National Bank and payable to the City National Bank in Wichita Falls, is the deficiency note, in the amount due and unpaid to the extent of $184,000.00.

Mr. Humphrey:

We offer this note in evidence, and ask that it be photostated.

(Marked "Plaintiff's Exhibit 203" as follows:)



NOV 6— [illegible]
NOV 7— [illegible]
DEC 2— [illegible]
DEC 26 [illegible]

[illegible] 19[illegible]

[illegible]

[illegible] BANK
IN WICHITA FALLS

[illegible] DOLLARS

AT THE OFFICE OF THE CITY NATIONAL BANK IN WICHITA FALLS, WICHITA FALLS, TEXAS, WITH INTEREST AT THE RATE OF TEN PER CENT. PER ANNUM, FROM MATURITY UNTIL PAID, AND TEN PER CENT ADDITIONAL ON THE PRINCIPAL AND INTEREST SHALL BE ADDED FOR ATTORNEY'S FEES, AFTER SAME HAS BEEN PLACED IN THE HANDS OF AN ATTORNEY FOR COLLECTION, OR COLLECTED THROUGH THE PROBATE COURT, OR, AT OPTION OF THE HOLDER HEREOF, AND IMMEDIATELY AND WITHOUT NOTICE, IF DEFAULT BE MADE IN THE PAYMENT OF ANY INTEREST OR PRINCIPAL WHEN DUE, AND THE MAKERS, ENDORSERS, SURETIES OR GUARANTORS HEREBY SEVERALLY WAIVE PRESENTMENT FOR PAYMENT, NOTICE OF NON-PAYMENT, PROTEST AND NOTICE OF PROTEST. VALUE RECEIVED

Due
4/10 1912
No. 26145

P. O. _____ R. _____
P. O. _____ R. _____
No. _____

[illegible]
By [illegible]
[illegible]

Int. 4 10
Disc. 10 [illegible]
Tax 6
Ck.
No. 26145

The Witness:

That note is secured by the pledge of the entire assets, and deed to the real estate, of the City National Bank. I have a list of the assets of the City National Bank of Wichita Falls, this is a statement taken from the books of the bank. I have placed no value on the two hundred lots in the Marlborough Addition in making up this statement. While I have recited approximately two hundred lots, as a matter of fact those are carried in the form of stock ownership in the Texas Investment Company, which company holds the legal title to the lots, and the bank owns the stock.

Mr. Humphrey:

We offer the statement in evidence.

PLAINTIFF'S EXHIBIT 204.

Assets.

The City National Bank of Wichita Falls,
February 18, 1937.

Cash in Bank	$1,789.93
Loans and Discounts (List attached)	451,598.71
Stock—100 sh. Bowers Oil Co.	1.00
2/384th Royalty interest—155 acres Gray Co., Texas	3,657.33
Real Estate (list attached)	110,882.60
	$567,929.57

Also approximately 200 lots in Marlborough Addition.

1535 Loan and Discounts

The City National Bank of Wichita Falls,
February 18, 1937.

Name—	
Alexander, Geo. A., Jr.	$2,788.86
Aulsbrook, C. J.	98.50
Baber, J. M.	8,500.00
Basham, C. E.	14,034.78
Britain, A. H.	2,000.00
Brown, Henry	8,726.35
Burnett, I. E.	1,904.57
Bynum, E. B.	387.00
Carson, H. H.	100.00
Cearley, B. W.	193.96
Chafin, E. V.	97.50
City Nat'l Co. of W. F.	107,160.00
Clark, S. H.	359.59
Cochran, E. B.	188.20
Cone, W. M.	324.48
Cooke, M. M.	418.35
Davis, A. L.	19.00
Dickey, L. H.	441.48
Evans, L. A.	14,278.62
Ferrell, Wilson	78.95
Floyd, W. E.	507.35
G. I. Oil Company	3,101.74
Gates Hereford Farms	604.00
1536 Geyer, Harry	24.00
Cholson, J. M.	4,609.09
Grantham, Cleo W.	43.15
Green, W. J.	6,500.00
Grisham, W. J.	5 500.00
H. & H. Fuel Oil Co.	348.82
Hampton, Jno. W.	1,536.00
Harding, E. P.	1,451.45
Harris, Theodore	250.00

Hines, Harry		547.00
Hoffman, F. J.		1,600.00
Holcomb, W. W.		91.30
Huffines, W. C.		50.00
Jensen, Walter		102.50
Kellow, S. R.		65.20
Kemp, J. A. Estate		117,699.07
Kertz, L.		1,961.43
King, Roy H.		1,396.35
Kovarik, Jan		357.97
Lee, J. F.		92.65
Logan, R. A.		10.00
Marshall, N. H.		155.85
Mask, B. B.		143.50
	McCulloch, R. W. H.	337.10
1537	McKenzie, T. F.	7,525.10
	Miller Drug Store	945.00
Miller, W. E.		32.75
Moss, T. J.		1,245.57
Mullins, R. L.		6,424.80
Myers, C. C.		379.00
Nolen, Chas. W.		33.66
North Texas Finance Corp.		1,399.55
Norwood, G. W.		1,053.60
Paul Tex Oil Co.		1,066.78
Riveer, M. M.		146.80
Robertson, W. L.		12,576.32
Robinson, Jas. R.		4,682.96
Saye, Frank		50.00
Schambs, Edward A., Jr.		68.63
Smith, C. C. Estate		995.70
Staber, Fred		638.56
Stone, Jerome S.		32,202.38
Stone, L. T.		200.00
Texas Investment Co.		1,894.79
Thomas, Jno. W.		36,261.77
Thornberry, H. T.		3,912.20
Turner, W. F.		277.30
Wehba, Katba		100.40

	Welch and Richardson	500.00
	Wichita Royalty Co.	22,365.93
1538	Williams, Sam	122.70
	Woodall, B. B.	910.75
	Yancey, J. S.	2,400.00
	Total	$451,598.71

The Witness:
This is a list of the real estate owned by the City National Bank of Wichita Falls.

Mr. Humphrey:
We offer that statement in evidence.

(Marked "Plaintiff's Exhibit No. 205" as follows):

PLAINTIFF'S EXHIBIT 205.

Real Estate Owned by The City National Bank of Wichita Falls, February 18, 1937.

	Description	Book Value
	Outer Block #25, Burkburnett, Texas (20 acres)	$ 1.00
	320 acres unimproved land, Andrews County, Texas	1.00
	1 vacant lot—Hillcrest, Plainview, Texas	200.00
	Undiv. ¼ int. lot 3 Priddy Addition Wichita Falls	1.00
1539	50 acres Wichita Co. Former S. W. Ref. Co. site	14,771.30
	143 acres land Kit Carson Co. Colo.	3,200.00
	36 acres unimproved land on Seymour Road Wichita County, W. S. Curlee	1,020.00

Description	Book Value
1807 Elizabeth St., Wichita Falls	4,315.30
1309 Lamar St., Wichita Falls	6,511.66
10 acres unimproved land, Wichita Co., H. G. Helgerson	1,000.00
1 vacant lot, 2607 Kemp Blvd., Wichita Falls	100.00
Undiv. ¼ int. in lots 6 & 7, Block 182, Jos. Long	5,000.00
134.61 acres unimproved land Wichita Co. (Pet. Gdns.)	10,673.82
Blocks 9-10-14-15-16, S. ½ 17, S. ½ 18, and 21 (Pet. Gdns.)	6,000.00
5 acres unimproved land Tyson Sub.	500.00
1 vacant lot at 104 Oriole St., Wichita Falls	50.00
1417-24th St., Wichita Falls	1,500.00
4 vacant lots on Kentucky St., Wichita Falls	400.00
Lots 1-2-3-4 Block 90 Wichita Falls (H. M. Harrison)	1.00
6986 acres land Dallan County, Texas	50,154.00
Undiv. ½ int. 160 acres land, Archer County (Otto Stehlik)	3,750.00
80 acres Pub. Sch. land, Hudspeth County, Texas	1.00
94.9 acres unimproved land Wichita Co. (Fritz Hendrick)	1.00
640 acres grass land Curry Co. N. Mexico	2,000.00
Total	$111,152.08
Less 1/10 int. in 200 acres of the Hartman tract, Wichita Co., Texas	269.48
Credit Balance	$110,882.60

1540 The Witness:

I am not undertaking to testify as to the actual value of this property, except as to the book value. I have been handling the real estate, and it is of a substantial value. These two hundred lots in the Marlborough Addition are properties adjacent to the Country Club Ad-

dition. There has been no market sale value of those lots. Up until the filing of the suit, I have been endeavoring to collect these notes in an orderly way. The instrument which you now hand me is a certified copy of the notice les pendens of this suit, and I could not sell the lots on account of this instrument.

Mr. Humphrey:

We offer in evidence the notice les pendens of this suit filed for record in Wichita County on June 19, 1936, at 4:25 P. M.

(Marked "Plaintiff's Exhibit No. 206" as follows:)

PLAINTIFF'S EXHIBIT 206.

Wichita Royalty Co. et al vs. Lis Pendens Notice City Natl Bank et al.

State of Texas,
County of Wichita.

Notice is hereby given that in a suit pending in the 30th District Court of Wichita County, Texas and numbered 24549-A, Wichita Royalty Company and E. E. Scannell its Trustee, filed on June 18, 1936, a third amended original answer, cross-action and interpleader against The City National Bank in Wichita Falls, Texas; J. T. Harrell, individually and as Trustee for The City National Bank of Wichita Falls, Texas, W. H. Peckham as Administrator of the Estate of G. W. Peckham, Deceased; William Peckham and George Peckham; Robert Peckham; Mrs. Hazel D. Peckham; Texas Investment Company, E. A. Deaton; L. H. Cullum; Le lie Humphrey, Tarlton Morrow, Jack Jeffus, Oral Jones; Frank Kell, Joe Kell; J. J. Perkins, C. W. Snider; F. P. Timberlake; The Humble Oil & Refining Company; The Texas

1541

Company; and The Continental Oil Company, wherein Wichita Royalty Company seeks the recovery of $200,000.00 (Two Hundred Thousand Dollars). Interest and costs against the several parties as their liabilities appear, and wherein it is alleged that The City National Bank of Wichita Falls, Texas was insolvent and in contemplation of continued insolvency long prior to March 1, 1933, and that thereupon its assets became a trust fund for the benefit of creditors to ratably distribute the same, and to make no preferences therefrom, but that numerous creditors had been preferred by payment through the action of the members of the Board of Directors of said bank to the prejudice of Wichita Royalty Company and with the further allegation that among the assets of The City National Bank of Wichita Falls, Texas, is all of the property standing in the name of Texas Investment Company, a. that all of the assets both real and personal,
belonging to The City National Bank of Wichita
1542 Falls, Texas, at the time of its insolvency and at the time it became in contemplation of insolvency where and are charged with an equitable lien for the benefit of all creditors, and that all transfers or conveyances thereof, and all liens sought to be created on any part of such assets are absolutely void, and that the parties and corporations to whom such a portion of such assets where transferred and to whom liens thereon were given knew of the insolvency of said bank, and they have held and now hold all of such asset that are still in their possession in trust for Wichita Royalty Company and other creditors; and as security for the $200,000.00 and interest thereon sued for Wichita Royalty Company claims a lien upon all properties standing in the name of Texas Investment Company and standing in the name of The City National Bank of Wichita Falls, Texas, as of the date of its contemplated insolvency as well as upon the assets that may have been assigned or conveyed by said bank thereafter; and prayer is made in said suit that said debt be recovered, said lien enforced, said trust fund restored, and said assets preserved for ratable distribution among the creditors

of said bank, and for other relief as from said amended pleading is manifest.

KILGORE & ROGERS,
By RAY BLAND,
Attorneys for Wichita Royalty Company.

Filed for Record June 19, 1936 at 4:25 P. M.

Recorded June 19, 1936 at 4:35 P. M.
JULIAN McFALL,
Clerk County Court, Wichita County, Texas.
1543 By JACK CONNELL,
Deputy.

Which copy is duly certified to by the clerk of the County Court of Wichita County, on June 27, 1936.

The Witness:

All of these town lots are located in Wichita County, Texas, and I think there is some market for the lots of the Marlborough Addition now except for this lis pendens which has prevented us from making a merchantable title to any of the real estate.

Cross Examination.

By Mr. Rogers:

Some of the directors of the old bank became directors of the new bank in March, 1933, I will furnish the examiner a list of such directors.

Plaintiff's Exhibits 200 and 201, those notations, the one dated January 17, note $1,000.00 and interest, $40.00. In other words, the Wichita Royalty Company borrowed that amount of money on each of those dates, and the proceeds went to the credit of G. W. Peckham. I have no independent recollection of those transactions, but I would say that those were notes executed by George

Peckham to the Wichita Royalty Company, which had been left with the collection Department of the City National Bank for collection.

The note offered in evidence is a renewal of the pre-existing note—I have before me a sheet of the City National Bank of Wichita Falls and the City National Bank in Wichita Falls, that reflect the transactions on the $184,-
000.00 note. There is no other liability between
1544 the two banks, nor has there been since March, 1933, than as reflected on that record. This is the liability between the two banks.

Mr. Rogers:

We offer that in evidence and ask that it be photostated, Defendant's Exhibit 162.

THE CITY NATIONAL BANK

WICHITA FALLS, TEXAS

SHEET NO. 3

0 & N

SECURITY LIABILITY LEDGER

NAME THE CITY NATIONAL BANK OF WICHITA FALLS,

ADDRESS U. S. T. DIVISION.

ACCOUNT	AMOUNT	RATE	MATURITY DATE	DESCRIPTION OF SECURITY	DR CR	PURCHASE DATE	MATURITY DATE	DAYS	INTEREST AMOUNT	ACTUAL
				1954 TRANS FROM OLD BANK						
				DEFICIENCY & NOTE TO ADJUST ACTUAL NOTES AS OF						
				1954 AS CREDIT SLIP TO FEDERAL RESERVE BANK						
				DEC NOTE 2.54 INT ON 30,000.			SOLD INT.			
				A SALE NOTE FOR INT	H		APR 26 54 28 S			
				PYT 19708 CK ON US 2,000.00						
				PYT 19708 CK ON US 1,500.00						
				PYT 19708 CHARGE SLIP 700.00						
				PYT 19708 CHARGE SLIP 6,200.00						
				PYT 19708 CHARGE SLIP 2,500.00						
				PYT 19708 CHARGE SLIP 2,450.00						
				PYT 19708 CHARGE SLIP 3,800.00						
				PYT 19708 CHARGE SLIP 985.00						
				A SALE NOTE FOR INT 2,250.00	H		OCT 26 54 3 S			
				PYT 19720 CHARGE SLIP 1,610.00						
				PYT 19720 CHARGE SLIP 2,400.00						
				PYT 19720 CHARGE SLIP 2,500.00						
				A SALE NOTE FOR INT	H		MAY 19 55 A S			
				PYT 19720 CK ON US 2,000.00						
				A SALE NOTE FOR INT 15,000.00	H		NOV 8 55 5 S			
				PYT 19720 CK ON US 1,500.00						
				PYT 19720 CHARGE SLIP 10,000.00						
				PYT NO. 19720 CK ON US 1,500.00						
				PYT NO. 19720 CK ON US 1,000.00						
				PYT NO. 19720 CHARGE SLIP						
				PYT 19708 CK ON US 1,500.00						
				A 19708 CK ON US 1500.00	H		MAY 8 56 6 S			
				PYT 19708 CK ON US 1,000.00						
				PYT NO. 19708 CK ON US 1500.00						
				PYT 19708 CK ON US 20,000.00						
				PYT 19708 CODE SLIP 15,000.00						
				A 19708	H		NOV 9 56 7 S			
				PYT 25299 CK ON US 50,000.00						
				PYT 25299 CK ON US 50,000.00						
				A 25299 & DEP 40,000.00	H		APR 10 57 8 S			
				PYT 26145 CK ON US 3500.00						
				PYT 26145 CK ON US 6,000.00						
				PYT 26145 CK ON US 1500.00						
				PYT 26145 CK ON US 5,000.00						

1546 The Witness:

On Plaintiff's Exhibit 204 is listed a substantial book value of bills receivable. I would not say any of those had been charged off of the books of the old bank before March, 1933—as far as I know, all of those notes were assets of the old bank in March, 1933. Included there is the Kemp estate obligation of over one hundred thousand dollars. The City National Bank of Wichita Falls is a corporation of some seven hundred and some odd thousand dollars, my impression is that it is an investment company that is organized by some of the stockholders of the City National Bank of Wichita Falls, to deal in mortgage loans and real estate notes. I have been able to make some collections on that obligation since I have been trying to liquidate these assets, I would estimate $35,000.00 or $40,000.00. That is a secured note. I have tried to collect all I could and as fast as I could on all of those obligations. I do not know that the J. A. Kemp note is worth anything.

On Plaintiff's Exhibit 205, I have not put down the values shown upon the books to have been the amount that the bank was out for the acquisition of those properties, some of them have a nominal value of $100. I have not been able to sell any of that land. The note charged against the Texas Investment Company is a note for advances made for taxes or some similar item.

We are suing the Wichita Royalty Company for $14,000.00 on a Texas Investment Company note, being one-half of a $28,000.00 deficiency which Mr. Harrell testi-

1547 fied he is liable on—I have not tried to collect that from anybody except the Wichita Royalty Company. I do not know that Mr. Harrell has testified he is liable on that note. I will try and liquidate the bank and get all the money I can to satisfy its customers. I could not say that I knew Mr. J. T. Harrell owed this old bank on the Texas Investment Company indorsement a deficiency of between its face value for $43,000.00 plus a credit of $20,000.00 and has owed it for many years, I have nothing charged on the books

against him further than his indorsement of that note. I have not filed suit against Mr. Harrell. I have not taken a renewal note from Mr. Harrell to keep the statute of limitation from running in his favor. I am the only employee of the old bank. Mr. Harrell has not received any compensation for acting as trustee of the old bank, he is still a trustee of its assets. So far as I know, Mr. Harrell is solvent. I would not be willing to say that I know the reasonable cash market value of those assets, in the aggregate.

Re-Direct Examination.

By Mr. Humphrey:

As a matter of fact, we have collected hundreds of thousands of dollars as assets of the old bank since it has been liquidated. We owed a big note to the Reconstruction Finance Corporation, and we paid that off. It is my recollection that the new bank assumed the Federal Reserve Bank note. We could continue to make progress during the liquidation of the old bank if it were not for the tying up of the assets in this lawsuit. I do not undertake to tell how many
1548 of these notes are collectable. The note of H. H. Carson is a well secured note, as are many others. I see here listed twenty acres out of block 35, Burkburnett, at $1.00, which is worth substantially more. Also 320 acres unimproved land in Andrews county in the neighborhood of oil development, it is listed at $1.00 and is worth substantially more; also fifty acres adjacent to the City of Wichita Falls, at $1.00, a refinery site and is worth substantially more. I do not mean to say that these lands could not have been sold, but I meant to say that we had not been able to get what we thought we should, under the present conditions. Here is a tract of six thousand, nine hundred and eighty-six acres of land in Dallam County, which is fine plains land. Also ninety-four acres of unimproved land in Wichita County, listed at $1.00, which is worth two or three thousand dollars.

The financial statement which you now hand me, of the old bank, March 20, 1933, shows that we had debts, exclusive of the stockholders liability, for capital stock of $793,000.00; liabilities something over $803,000.00, and we have liquidated it down to $184,000.00.

Re-Direct Examination.

By Mr. Morrow:

These notes that are listed here on Exhibit 204, do not purport to show the charged off paper. When I said I had not collected on some of these items I did not mean that they had no value; I found that
1549 in the liquidation if I force collection on some of the matters that it would destroy the value, where as by waiting and indulging and giving assistance, and taking other securities, conditions have improved and we expect to collect—I think that is true of any paper in any bank.

Re-Direct Examination.

By Mr. Humphrey:

We have bills payable just after the organization of the new bank, the old bank had bills receivable of $1,215,000.00, they are now $451,000.00.

Re-Cross Examination.

By Mr. Rogers:

I have made a report to the government at the close of business December, 1936.

Mr. Rogers:

We offer it in evidence, and ask that it be photostated.

(Marked "Defendant's Exhibit 163" as follows:)

1345

REPORT OF LIQUIDATING ____ of The ____ National Bank of ____, ____

for the Period ended December 31, 1936.

ASSETS						LIABILITIES			
						1. Capital stock paid in,			
						2. Surplus fund,			
						3. Undivided profits,			
						4. Reserved for taxes, etc.,			
						5. Due to Federal Reserve Bank,			
						6. Due to National banks,			
						7. Due to State banks and bankers,			
						8. Individual deposits,			
						9. Savings deposits,			
						10. Cashiers' and certified checks,			
						11. Certificates of deposit,			
						12. U. S. deposits,			
						13. Postal savings deposits,			
						14. Rediscounts with Federal Reserve bank,			
						15. Rediscounts and bills payable,			
						16. Liabilities other than those above stated,			
						Totals,			

Total liquidating dividends paid to date, $ _____ _____ percent.

RECEIPTS AND DISBURSEMENTS FOR PERIOD ENDED DECEMBER 31, 1936

RECEIPTS			DISBURSEMENTS		
1. Cash on hand at beginning of period,			1. Paid depositors,		
			2. Paid to Treasurer,		
			3. Paid for Expenses,		
			4. Paid Rediscounts & Bills Payable,		
			5. Paid shareholders,		
			Sale of capital assets: Book value of capital stock sold,		
			Amount received on capital stock,		
			6. Cash on hand at end of period,		
Totals,			Totals,		

I hereby certify the above report to be correct.

Treas. of Receiver

1551 P. H. LAMBERT, a witness for the plaintiff, being first duly sworn, examined in chief by Mr. Humphrey, testified as follows:

My name is P. H. Lambert, commonly called "Pat". I am a Certified Public Accountant, have been granted a certificate to practice accountancy before the Board in the State of Texas. I have been such accountant since May, 1926, and have been engaged in public accounting constantly during eleven years. I have been working as an accountant for fifteen years. I was employed by the City National Bank to make an audit and investigation of the matters involved in this lawsuit, I was so employed in October, 1936. I have spent approximately seventy-five working days on that matter. It involved a detailed examination of all of Mr. Peckham's deposit slips, covering the deposits to his account in the City National Bank and such deposit slips as covered the deposits in other banks which we could find, to try to ascertain from where the money came that he deposited to his credit in these various banks; then it involves a detailed examination of all of his checks, all of the checks that were issued against his bank account with the City National Bank, and such other checks as we could find from the accounts that he carried with other banks; it covered a period beginning January 1, 1923, and closing with his death in 1929, that is as far as the personal receipts and disbursements were concerned. Then we examined his account, that is, his liability account with the City National Bank in detail. Moneys borrowed from the bank,
1552 and moneys paid to the bank, together with the interest charges, and at the same time making a detailed examination of his current daily checking account with the bank, trying to determine what moneys were applied by Peckham to pay his personal obligation to the bank. Then in addition to that, Mr. Carson and I have made several trips to the various counties, running the county records, trying to find some trace of the properties which Mr. Peckham bought

in various counties, in this area, and all the properties which he bought and transferred to the Royalty Company, all property which he owned an interest in and which was carried in some one else's name, the properties which he bought for the Royalty Company were carried in another name, in fact, we ran the records to find anything that Mr. Peckham had anything to do with. In addition to that, we made an investigation of the books and records of the Wichita Royalty Company, their vouchers and checks were not available for inspection. However, I had a copy of them, that is, a typewritten copy. The checks themselves were available, however, I did not ask for them myself. I did have their ledgers or photostatic copies of their general ledger for examination, and part of their cash books for examination. I have made my audits from the various records as outlined. I have also read the pleadings in this lawsuit, and know the allegations contained therein. I made an investigation of each of the transfers made by Peckham from the account of the Wichita Royalty Company to his individual account during this period of
1553 time, the source of deposits to G. W. Peckham's account from January 1, 1923 to November 6, 1929. I have prepared here a report which includes the payments made by G. W. Peckham for the purchase of properties to the account of Wichita Royalty Company or for the payment of the Wichita Royalty Company's liability for borrowed money; and there is also included herein all checks which show that the City National Bank or other bank as payee, which were deposited in said Peckham's personal account, except it does not include the monthly salary and expense items paid to G. W. Peckham.

Mr. Humphrey:

At this time I would like to have the report of Mr. Lambert marked "Plaintiff's Exhibit 207," and will introduce it in the record later on.

The Witness:

I will take this report, Plaintiff's Exhibit 207, and tell you what it is.

It is a summary of funds deposited to the personal account of G. W. Peckham for the period beginning January 1, 1923, and ending with his death in November, 1929. It includes all deposits to his account, except his monthly salary and expense items paid to Peckham by the Wichita Royalty Company. And this includes all payments made to Peckham for the purchase of properties for the account of the Wichita Royalty Company and for the payments of said company's liabilities for borrowed moneys. There is also included herein all checks which show the City National Bank or any other bank as payee, and which were deposited to
1554 George Peckham's personal account. And it compares the items which Mr. Peckham deposited in his personal account from the Wichita Royalty Company, with the total items deposited in the account from all sources.

The first page, under the year 1923, it shows that seven items originating and coming from the Wichita Royalty Company were deposited to George Peckham's personal account, and these items total $9,663.33. During the same period, two hundred and one items originating from other sources were deposited to George Peckham's personal account, a total of $242,189.37. The total items deposited to George Peckham's account during the year 1923 amounted to two hundred and eight different items, and totaled $251,852.70. Of the total deposit to George Peckham's account, three percent of the items originated with the Wichita Royalty Company, and four percent of the amount deposited originated with the Wichita Royalty Company, ninety-seven percent of the items deposited to George Peckham's account during that year were personal items which did not come from the Wichita Royalty Company, and ninety-six percent of the amount of funds deposited to George Peckham's personal account during the year were personal items

which did not originate with the Wichita Royalty Company. And during the year 1924 there was deposited in Mr. Peckham's personal account, six items which originated with the Wichita Royalty Company and which totaled $38,445.00. There were deposited in his personal account during the same period, two hundred
1555 and eighty-five items which did not originate with the Wichita Royalty Company, and which were personal items totaling $392,256.53. During the entire year there was deposited two hundred and ninety-one items amounting to $430,701.53, of which total, two percent in volume, that is, in number of items, originating with the Wichita Royalty Company and nine percent of the amount came from the Wichita Royalty Company, leaving ninety-eight percent of the items as personal items not originating with the Wichita Royalty Company, and $392,256.53, or ninety-one percent being personal funds originating outside of the Wichita Royalty Company.

Now, for the year 1925, there was deposited to Mr. Peckham's personal account five items originating with the Wichita Royalty Company, totaling $20,250.00. During the same period there were deposited one hundred and ninety-six other items totaling $449,365.09, which did not originate with the Wichita Royalty Company and were personal funds, making a total for the year of 201 items amounting to $469,615.09. For the year, two percent of the items originated with the Wichita Royalty Company and only four percent of the amount. While ninety-eight percent of the items deposited in his account during that year originated from personal sources and ninety-six percent of the funds deposited in that year were personal funds which did not originate with the Wichita Royalty Company.

For the year 1926, seventeen items originating with the Wichita Royalty Company and amounting
1556 to $95,488.51, were deposited in Mr. Peckham's personal account. During the same period sixty-nine items totaling $145,930.65, and being personal funds,

not originating in any manner with the Wichita Royalty Company were deposited to Mr. Peckham's personal account, making a total for the year 1926, of eighty-six items amounting to $241,419.16. For the year 1926, twenty percent of the items deposited in Mr. Peckham's account originated with the Wichita Royalty Company, and forty percent of the amount originated with the Wichita Royalty Company, while eighty percent of the items were personal funds, from other sources, and sixty percent of the amount deposited to his account originated from sources other than the Wichita Royalty Company.

During the year 1927, nine items, totaling $14,201.82, originated from the Wichita Royalty Company and were deposited to Mr. Peckham's personal account, while sixty-eight items totaling $76,098.48 were deposited to Mr. Peckham's account and were personal funds and items from sources outside of the Wichita Royalty Company, making a total for the year of seventy-seven items amounting to $90,300.30, deposited to Mr. Peckham's account. Of this total deposit for the year 1927, twelve percent of the items originating with the Wichita Royalty Company and sixteen percent of the amount came from the Wichita Royalty Company. While during the same period eighty-eight percent of the items were personal items and eighty-four percent of the amount deposited to his account were personal funds
1557 coming from sources other than the Wichita Royalty Company.

For the year 1928, two items, amounting to $2,274.66, and having as their source the Wichita Royalty Company, were deposited to the personal account of G. W. Peckham. During the same year sixty-three items totaling $66,870.96 and being personal items not originating with the Wichita Royalty Company, were deposited to Mr. Peckham's personal account, making a total of sixty-five items amounting to $69,145.62, deposited to Mr. Peckham's personal account during the year 1928. Of these totals, three percent of the items originated with the

Wichita Royalty Company and three percent of the amount originated with the Wichita Royalty Company. While for the same period ninety-seven percent of the items and ninety-seven percent of the amount, came from sources other than the Wichita Royalty Company.

Now, during the year 1929, up to the time of Mr. Peckham's death, there were not any items deposited in Mr. Peckham's account from the Wichita Royalty Company. However, there were deposited to his account eighty-two items, totaling $130,499.73, all of which were personal funds and not originating in the Wichita Royalty Company, making a total for the entire period of forty-six items amounting to $180,323.32, deposited in Mr. Peckham's personal account and originating with the Wichita Royalty Company. And during the same period there were deposited in his personal account nine hundred and sixty-four items totaling $1,503,210.81, which
1558 were personal funds and items originating from sources other than the Wichita Royalty Company, making a total deposit of items, in amount, during the period, of one thousand and ten items, and a total of $1,683,534.13. And for the entire period five percent of the items and eleven percent of the amount deposited to Mr. Peckham's personal account originated with the Wichita Royalty Company, while ninety-five percent of the items and eighty-nine percent of the amount deposited to Mr. Peckham's personal account were personal funds originating from sources other than the Wichita Royalty Company.

The pages following the first page, as above outlined, are items by months for the entire period and supporting the data contained in the first page. It is taken from the books and records of the City National Bank and traced in connection with the books and records of the Royalty Company, and also from the bank account of G. W. Peckham and his deposit slips. On page 1356, Plaintiff's Exhibit 207, there is an item, June 19, July, 1924, that is classed as funds from the Wichita Royalty Company, $21,000.00. That amount is made up of two

items, an item of $10,000.00 and an item of $11,000.00, being two checks issued by the Wichita Royalty Company, made payable to the Security National Bank and those two checks did not go into Mr. Peckham's account in the City National Bank, and that $21,000.00 is included herein in error. At the time this was made up, I did not have the Wichita Royalty Company's check available,
for inspection, however, I will say that I had
1559 not asked for them at that time. If that $21,-
000.00 went into Mr. Peckham's personal account, it went in there by indirection. Both of the above checks were payable to the Security National Bank, they were not deposited in the City National Bank to Mr. Peckham's individual account. The checks are dated, $11,000.00 July 2, 1924, and $10,000.00 July 24, 1924. They were paid by the Security National Bank out of the City National Bank. There was a $11,000.00 deposit made on July 2, to George Peckham's account in the City National Bank. There was a deposit of $10,000.00 made to George Peckham's account in the City National Bank on July 25th, about the time of the issuance of these two checks. Of course, my investigation showed that the checks themselves were not deposited to the credit of Mr. Peckham. From what source he obtained that $21,000.00 I am unable to ascertain. I am informed the books of the Security National Bank have been destroyed. Nevertheless, I classified that in the transfer of funds from the Wichita Royalty Company, in making up this statement, which took that $20,000.00 to make up the total of $180,323.30, that item does not include the salary checks. Including Mr. Peckham's salary checks, all expense items and any other item issued to him by the Wichita Royalty Company and transferred and deposited to his personal account at the City National Bank, the sum was $186,859.20, being made up of one hundred and twenty-four items, and stretching over the entire period beginning January 1,

1923, and closing at the time of his death in 1929.
1560 Now, this $180,323.32 must be reduced by the amount of that $21,000.00, then to that sum is added the salary checks and expense checks which makes up all the items which went to his account as transferred from the Wichita Royalty Company—in other words, I take from the $180,000.00 the $21,000.00 item and add to it all of the salary checks and other expense items, and get a grand total of $186,000 and some odd dollars.

Mr. Humphrey:
We offer the audit in evidence.

(Instrument marked "Plaintiff's Exhibit 207")

1561 Summary of Funds Deposited to the Personal Account of G. W. Peckman, January 1, 1923, to November 6, 1929.

Source of Funds Deposited.

Year		Items	From Wichita Royalty Company	Items	From Other Sources	Items	Total Deposits
1923		7	$ 9,663.33	201	$242,189.37	208	$251,852.70
	Percent	3%	4%	97%	96%	100%	100%
1924		6	38,445.00**	285	392,256.53	291	430,701.53
	Percent	2%	9%	98%	91%	100%	100%
1925		5	20,250.00	196	449,365.09	201	469,615.09
	Percent	2%	4%	98%	96%	100%	100%
1926		17	95,488.51	69	145,930.65	86	241,419.16
	Percent	20%	40%	80%	60%	100%	100%
1927		9	14,201.82	68	76,098.48	77	90,300.30
	Percent	12%	16%	88%	84%	100%	100%
1928		2	2,274.66	63	66,870.96	65	69,145.62
	Percent	3%	3%	97%	97%	100%	100%
1929—(10 Mo. and							
	6 Days)	-o-	-o-	82	130,499.73	82	130,499.73
	Percent	-o-%	-o-%	100%	100%	100%	100%
	Totals	46	$180,323.32	964	$1,503,210.81	1,010	$1,683,534.13
	Percent	5%	11%	95%	89%	100%	100%

1354

**Note: See explanatory notation regarding a portion of this amount at the bottom of the following page.

Note: In the following pages, the above is shown by months for the entire period.

1562 Funds Deposited in the Personal Account of G. W. Peckham, January 1, 1923, to November 6, 1929.

	Deposited to Peckham's Account				Funds From The Wichita Royalty Co.	
	Number of Items	City National Bank	Other Banks	Total	Amount	Items
1923						
January	9	$10,217.87			$1,040.00	1
February	14	13,327.28			1,046.66	2
March	21	14,728.31				
April	18	25,087.45			5,043.34	3
May	21	16,946.59			2,533.33	1
June	11	31,576.45				
July	20	28,180.00				
August	21	57,576.13				
September	13	25,698.29				
October	11	7,682.46				
November	30	13,488.13				
December	16	7,343.74				
Total	208	$251,852.70		$251,852.70	$9,663.33	7

	Deposited to Peckham's Account				Funds From The Wichita Royalty Co.	
	Number of Items	City National Bank	Other Banks	Total	Amount	Items
1924						
January	17	$ 7,291.04			$5,000.00	1
February	13	33,927.52			2,500.00	1
March	29	133,818.53			9,250.00	1
April	26	33,192.72				
May	31	26,699.20				
June	19	23,111.03				
July	34	26,615.40			21,000.00**	2
August	5	3,214.65				
September	8	3,819.24				
October	50	21,159.31				
November	32	38,589.63	$3,000.00			
December	27	65,513.26	10,750.00		695.00	1
Total	291	$416,951.53	$13,750.00	$430,701.53	$38,445.00	6
1925						
January	24	$48,644.50	$20,000.00			
February	26	46,025.30				
March	13	25,910.74				
April	42	112,719.80	10,000.00			

May	17	41,964.86			$ 2,500.00	1
June	11	26,578.40	19,500.00		11,000.00	2
July	19	39,667.23				
August	2	837.93				
September	18	11,837.58	3,000.00			
October	9	11,022.36			5,500.00	1
November	10	39,545.75				
December	10	12,360.64			1,250.00	1
Total	201	$417,115.09	$52,500.00	$469,615.09	$20,250.00	5

**Note:—Explanation of $21,000.00 Item.

This item consists of two checks—one for $11,000.00, issued on July 2, 1924, and one for $10,000.00, issued on July 24, 1924; both drawn on the deposit account of the Wichita Royalty Company at the City National Bank and both were payable to the Security National Bank. And neither of these checks were deposited in the City National Bank. This item is listed and shown above only because of the allegations in the cross complaint and should not be classed as a transfer of funds from the Wichita Royalty Company to the Individual account of G. W. Peckham.

1926						
January	9	$30,379.98			$25,769.07	3
February	8	32,206.26				

	Deposited to Peckham's Account				Funds From The Wichita Royalty Co.	
	Number of Items	City National Bank	Other Banks	Total	Amount	Items
March	9	26,941.70	$8,285.00		31,123.70	3
April	3	604.38				
May	10	4,942.08			4,500.00	2
June	10	22,403.27			4,500.00	1
July	6	1,691.27			1,000.00	1
August	4	13,007.58			8,357.58	2
September	6	6,419.47				
October	9	55,017.24			10,000.00	1
November	5	33,500.00			7,500.00	1
December	7	6,020.93			2,738.16	3
Total	86	$233,134.16	$8,285.00	$241,419.16	$95,488.51	17
1927						
January	8	$10,098.16			$2,000.00	1
February	12	6,819.66			2,500.00	1
March	12	10,111.49			2,801.82	3
April	11	17,864.00				
May	7	6,321.29				
June	5	3,521.00			1,200.00	1
July	3	1,466.50				

August	5	4,000.00			1,500.00	1
September	5	20,550.87				
October	2	3,000.00			2,400.00	1
November	3	3,200.00			1,800.00	1
December	4	3,347.33				
Total	77	$90,300.30		$90,300.30	$14,201.82	9
1928						
January	6	$ 2,864.00				
February	5	7,899.00				
March	6	939.50				
April	3	2,567.87			$1,850.00	1
May	4	1,324.68				
June	5	2,613.37				
July	7	7,712.50				
August	4	9,200.00				
September	9	18,398.80			424.66	1
October	3	898.00				
November	8	5,394.90				
December	5	9,333.00				
Total	65	$69,145.62		$69,145.62	$2,274.66	2

1929	Deposited to Peckham's Account: Number of Items	City National Bank	Other Banks	Total	Funds From The Wichita Royalty Co.: Amount	Items
January	5	$ 3,284.66				
February	2	504.00				
March	5	1,300.00				
April	3	10,871.16				
May	6	11,461.45				
June	11	50,490.53				
July	13	18,700.42				
August	10	11,080.25				
September	13	14,255.84				
October	12	7,651.42				
November (6 da.)	2	900.00				
Total	82	$130,499.73		$130,499.73	-0-	-0-
Total January 1, 1923 to November 6, 1929		$1,608,999.13	$74,535.00	$1,683,534.13	$180,323.32*	

*Note:—These amounts do not include the monthly salary and expense items paid G. W. Peckham, but do include any and all payments made to G. W. Peckham for the purchase of proerties for the account of Wichita Royalty Company or for the payment of said Company's liability for borrowed monies. There is also included herein all checks which show the City National Bank, or any other bank, as payee and which were deposited in said Peckham's personal account.

1565 The Witness:

Plaintiff's Exhibit 208, which you now hand me, is a reconciliation of the amount as alleged to have been transferred to George Peckham's account and set out in Mr. Scannell's testimony of this record, and the actual amount which we find was actually transferred from the Wichita Royalty Company's account to the account of G. W. Peckham. Mr. Scannell testified that the total transferred from the account of the Wichita Royalty Company to the account of G. W. Peckham during this time, was $253,418.41, and I have undertaken to determine the accuracy of that statement. He has included in that sum numerous items which were not transferred to Mr. Peckham's account, and which you could not well classify as transferred, because they did not enter into Mr. Peckham's account; they consist of fifteen checks, which they allege as transfers from the royalty company to Peckham and which checks never went into Peckham's account, and were not issued to Peckham or bearer, as scheduled in Plaintiff's Exhibit 208. I have listed in my schedule $64,533.00 worth of checks; the checks either did not go into Mr. Peckham's account or they were not payable to Peckham or bearer. Check No. 1,253, issued March 10, 1923, was payable to the City National Bank and it was to B. L. Fain, he got that for the Grimshaw royalty amounting to $2,500.00, Mr. Peckham did not get that, it did not go into his bank account.

Check No. 46, issued August 14, 1923, was payable to W. H. Peckham and it was for oil obligation on some Oklahoma property up here. However, W. H.

1566 Peckham indorsed it and G. W. Peckham deposited it to his account, but it did not come from the Royalty Company to George Peckham. Check No. 48, issued August 14, 1923, payable to W. H. Peckham was for a debt on some oil properties, however, W. H. Peckham indorsed it and George Peckham took the check and indorsed it himself again and deposited it to his account. It did not come from the Royalty Com-

pany to George Peckham. I know what those checks were for, they were some obligations on some Oklahoma property. The first check to W. H. Peckham, No. 46, was to apply on the last payment of royalty interest No. 68, which was the Ellis Holmes tract which they had bought from W. H. Peckham and on which they still owed the balance. And the checks issued to B. L. Fain was to apply on royalty interest No. 67, for the Eagle Pitcher lease, that they owned in Oklahoma and on which at that time owed B. L. Fain a balance.

Check No. 48, issued to W. H. Peckham was to apply on royalty interest No. 7, being the Eagle Pitcher lease, and constituted an assignment of the debt they owed Peckham from the purchase price of that. Some of those purchases were made prior to the time Peckham became trustee. The Eagle Pitcher and the Ellis Holmes, according to the Wichita Royalty Company records were very productive properties, and paid considerably more than the purchase price.

Check No. 49, was issued to B. L. Fain and indorsed by B. L. Fain, then indorsed by George Peckham and deposited to George Peckham's account, and it was issued to B. L. Fain to apply on Eagle Pitcher lease,
1567 Okmulgee, Oklahoma, and it was for an obligation which they owed B. L. Fain for the purchase price of that property.

The next item was check No. 101, payable to the City National Bank, dated November 14, 1923, for $2,200.00, and it was given to purchase oil runs, and on the same day check No. 102, payable to the City National Bank for $500.00 was given for the same purpose. Those two checks were not deposited in George Peckham's account, I verified that from George Peckham's sheet and records.

No. 154, dated February 2, 1924, was issued to B. L. Fain for $12,000.00 and the original voucher stated, "To purchase royalty interest in Tonkowa, and Creek County, Oklahoma." But later on that $12,000.00 was applied on the purchase price of the Wilson Royalty. However,

the check was issued to B. L. Fain and B. L. Fain indorsed it. George Peckham indorsed it and deposited it in George Peckham's account. George Peckham acquired the Wilson royalty and transferred it to the Wichita Royalty Company, an interest in it,—the check came through B. L. Fain.

Check No. 237, issued on July 2, 1924, payable to the Security National Bank in the amount of $11,000.00, was not deposited to George Peckham's account.

Check No. 246, issued July 24, 1924, payable to the Security National Bank in the amount of $10,000.00, and was not deposited to George Peckham's per-
1568 sonal account. Those two items make up the $21,000.00, which I have corrected on Plaintiff's Exhibit 207.

Check No. 479, issued March 6, 1926, payable to the Security National Bank in the amount of $6,000.00, that check was deposited in the Security National Bank to the credit of George Peckham and that happens to be one of the Security National Bank statements that we have been able to find, among George Peckham's papers. That check was not deposited to the credit of George Peckham in the City National Bank at all.

Check No. 557, issued December 7, 1926, payable to the City National Bank in the amount of $1,920.00 was not deposited to George Peckham's account. It went to take up a draft direct for some properties which went through the Wichita Royalty Company and was the Hartley County property, being property No. 94, Wichita Royalty Company. That did not go to the credit of George Peckham.

The next check, 602, dated April 23, 1927, issued to B. L. Fain for $1,000.00 was to purchase the Milner Oil runs; that check was indorsed by B. L. Fain and later indorsed by G. W. Peckham and deposited to Peckham's account. It came through B. L. Fain and George Peckham.

Check 607, dated May 6, 1927, was issued to B. L. Fain and was another payment on those Milner oil runs which

the Wichita Royalty Company bought; that check was indorsed by B. L. Fain, and then indorsed by
1569 George Peckham, and deposited in George Peckham's account, and came through Fain and Peckham.

No. 610, issued May 16, 1927, payable to B. L. Fain and was for the balance due on the Milner oil runs which the Wichita Royalty Company bought; that check was indorsed by B. L. Fain, later indorsed by G. W. Peckham and deposited in G. W. Peckham's account. That accounts for $64,553.81, that Mr. Scannell claims was transferred of the Wichita Royalty Company account to Peckham's account.

The next item, fifteen checks issued to Peckham or bearer for salary and expenses which never found their way into Peckham's account in the City National Bank as per my schedule amounting to $5,030.18. That is schedule A. None of those items on Schedule A was deposited to George Peckham's individual account. I will explain the remainder of that statement, there was three checks issued to bearer and set out in George Peckham's account in the City National Bank, but were not alleged as transferred by the Royalty Company as shown on page 10, attached hereto.

On page 10, the first check, No. 1194, dated January 7, 1923, and payable to the City National Bank for payment of property No. 52, for $1,040.00, deposited to George Peckham's account. That was the Curry property, in Texas.

One thousand two hundred and thirty eight is a check issued on February 21, 1923, payable to the City National Bank, being a payment on property No. 52, and deposited to Peckham's personal account, and
1570 amounting to $1,046.66.

The next item, check No. 1,282, issued on April 2, 1923, payable to the City National Bank and being a payment on property No. 70, and deposited to George Peckham's account in the sum of $1,006.67. That was the Ellis Holmes tract, Eagle Pitcher lease, Okmulgee

County, Oklahoma. That property No. 52, on which two payments were made, the Curry property was bought from George Peckham before the first of January, 1923, while Ross Robertson was trustee. These two checks of $1,040.00 and $1,046.00, each was a payment on that property. Check No. 7, $1,006.67, was a payment on the Eagle Pitcher lease in Oklahoma. I think there was payments made on it prior to the time George Peckham took office, and that payment is applied on the account which they owed W. H. Peckham.

Agreement: Mr. Morrow, the checks, Nos. 1,194 and 1,238, are the two checks that were shown on the deposit slip and introduced in evidence this morning, as having been taken by Mr. Deaton through the collection department of the City National Bank of Wichita Falls; and these two each represent payments by the royalty company upon an indebtedness to George Peckham, which indebtedness was created prior to the time that Peckham became trustee, and at a time when Robertson was trustee.

Mr. Rogers:

We agree to that.

1571 The Witness:

This item of $186,859.20 represents the fund actually evidenced by checks issued to G. W. Peckham or bearer and deposited to the credit of his account at the City National Bank of Wichita Falls, Texas, and it includes salaries, moneys advanced to him for properties, moneys advanced to him to pay their indebtedness, and any and all checks issued to him by the Wichita Royalty Company and deposited to his personal account; it represents the entire transfer of funds direct from the Wichita Royalty Company's account to Peckham's account from January 1, 1923, to November 6, 1929, including salary checks and expense items. The supporting data on that is shown in Plaintiff's Exhibit 208 on pages 1369 and 1373.

Mr. Humphrey:

We offer in evidence Plaintiff's Exhibit 208, as follows:

(Marked "Plaintiff's Exhibit 208" and reading as follows:)

PLAINTIFF'S EXHIBIT 208.

Reconcilement of the Funds Alleged to Have Been Transferred to G. W. Peckham's Personal Bank Account With the Amount of the Funds Actually Transferred to His Account, January 1, 1923, to November 7, 1929.

P. H. Lambert & Company, Certified Public Accountants, Wichita Falls, Texas.

1572 Funds Alleged by Wichita Royalty Company to Have Been Transferred to the Account of G. W. Peckham in the City National Bank and the Reconcilement of the Alleged Amount With the Actual Amount of Such Transferred Funds.

Total amount alleged to have been transferred from the Wichita Royalty Company to Peckham's personal account at the City National Bank (Scannell's testimony, Page —)		253,418.41
Deduct—		
Reconcilement With Actual Transfers.		
Fifteen checks alleged as transfers from the Royalty Company to Peckham, but which checks never went into Peckham's account, or were not issued to either Peckham or Bearer, as per schedule on Page 1375, attached	$64,533.81	
Fifteen checks issued to Peckham or bearer for salary and expenses which never found their way into Peckham's account at the City National Bank as per schedule on page 1374, attached	5,030.18	69,583.99
Balance		$183,834.42

Add—		
Three checks issued to bearer and deposited in Peckham's account at the City National Bank, but not alleged as transfers by the Royalty Company, as per schedule on page 1376, attached	3,093.33	
Less: Uniocated difference	68.55	3,024.78
Funds actually evidenced by checks issued to G. W. Peckham or bearer and deposited to the credit of his account at the City National Bank as set out in the schedule on pages 1369 to 1374, attached.....		186,859.20

1573 Summary of Wichita Royalty Company Checks Issued to Bearer or G. W. Peckham and Deposited in the City National Bank to the Credit of G. W. Peckham.

January 1, 1923, to November 7, 1929.

	For Salary		Refund of Expense		To Buy Properties or Retire Liabilities		Total	
Year	Items	Amount	Items	Amount	Items	Amount	Items	Amount
1923	9	4,500.00	3	474.65	6	9,663.33	18	14,637.98
1924	9	4,500.00	1	55.35	5	18,645.00	15	23,200.35
1925	13	5,300.00	0	.00	5	20,250.00	18	25,550.00
1926	9	3,600.00	0	.00	14	88,250.35	23	91,850.35
1927	12	4,800.00	2	647.33	9	14,239.98	23	19,687.31
1928	12	4,800.00	3	858.55	2	2,274.66	17	7,933.21
1929 (to 11-7)	10	4,000.00	0	.00	0	.00	10	4,000.00
Totals	74	$31,500.00	9	2,035.88	41	$153,323.32	124	$186,859.20

1369

1574 Detailed Statement of Wichita Royalty Company Checks Issued to G. W. Peckham and Deposited to His Account in the City National Bank.

Date Paid	Check No.	Amount and Purpose		
		Salary	Expense Refunds	On Properties and Debts
1923				
1-17	1194			$1,040.00
2- 5	1217	$500.00		
2-21	1238			1,046.66
3- 1	1245	500.00		
3-14	1262		$ 52.25	
4- 2	1280	500.00		
4- 2	1282			1,006.67
4- 2	1281			1,520.00
4-10	1291			2,516.67
4-17	1290		22.40	
5- 8	1310	500.00		
5- 8	1322		400.00	
5-11	1325			2,533.33
8- 3	34	500.00		
9- 1	54	500.00		
10-16	73	500.00		
11- 1	92	500.00		
12-24	134	500.00		
		$4,500.00	$474.65	$9,663.33
1924				
1-19	147			5,000.00
1-31	149	500.00		
2- 9	160			2,500.00
2-29	169			1,200.00
3- 4	171	500.00		
3-18	185			9,250.00
3-29	188	500.00		
5- 1	205	500.00		
6-28	232	500.00		

Date Paid	Check No.	Amount and Purpose: Salary	Expense Refunds	On Properties and Debts
7-31	247	500.00		
7-31	251		55.35	
10-18	272	500.00		
10-31	286	500.00		
11-29	304	500.00		
12-23	317			695.00
		$4,500.00	$55.35	$18,645.00
1925				
1- 3	320	500.00		
2- 5	338	400.00		
3- 5	347	400.00		
4- 2	357	400.00		
5- 2	370	400.00		
5- 5	373			2,500.00
6- 2	378	400.00		
6-24	385			6,000.00
6-29	387			5,000.00
7- 7	388	400.00		
8- 3	400	400.00		
9-10	411	400.00		
9-30	422	400.00		
10- 8	427			5,500.00
11- 2	433	400.00		
12- 3	444	400.00		
12-28	451			1,250.00
12-31	453	400.00		
		$5,300.00	$ .00	$20,250.00
1926				
1- 4	452			5,000.00
1-11	458			5,000.00
1-18	461			15,769.07
2- 2	466	400.00		
2-27	477	400.00		

Date Paid	Check No.	Amount and Purpose: Salary	Expense Refunds	On Properties and Debts
3- 6	478			17,623.70
3-31	485			7,500.00
4- 3	487	400.00		
5-20	503			3,000.00
5-29	505	400.00		
6- 2	507			1,500.00
6-16	510			4,500.00
7- 6	512	400.00		
7-15	519			1,000.00
8- 2	523	400.00		
8- 2	525			4,000.00
8-27	532			4,357.58
9-30	537	400.00		
10-14	541			10,000.00
10-30	545	400.00		
11-20	550			7,500.00
12- 2	552	400.00		
12- 2	554			1,141.82 160.00 198.18
		$3,600.00	$ .00	$88,250.35

1927

Date Paid	Check No.	Amount and Purpose: Salary	Refunds	Debts
1- 3	564	$ 400.00		
1- 1	556-A			$ 538.16
1-19	571			2,000.00
2- 2	574	400.00		
2-19	579			2,500.00
3- 2	581	400.00		
3- 8	582		$500.00	
3-16	583			301.82
3-23	591			8,000.00
4- 2	594	400.00		
4-30	604	400.00		

Date Paid	Check No.	Amount and Purpose Salary	Refunds	Debts
6- 8	614	400.00		
6-16	620			1,200.00
7- 1	623	400.00		
8- 1	63[illegible]	400.00		
8-16	635			1,500.00
9- 6	637	400.00		
10-15	650			2,400.00
11- 5	653	400.00		
11-25	657			1,800.00
12- 5	659	400.00		
12-21	670		147.33	
12-27	672	400.00		
		$4,800 00	$647.33	$14,239.98

1928

Date Paid	Check No.	Amount and Purpose Salary	Expense Refunds	On Properties and Debts
1-31	684	400.00		
3- 6	692	400.00		
3-31	701	400.00		
4- 6	702		548.12	
4-11	706		169.75	
4-23	710			1,850.00
5- 1	713	400.00		
5-21	718		140.68	
6-12	720	400.00		
7- 9	727	400.00		
8- 3	738	400.00		
9-10	747	400.00		
9-27	752			424.66
10-12	754	400.00		
11- 1	762	400.00		
11-30	767	400.00		
12-31	775	400.00		
		$4,800.00	$858.55	$2,274.66

1929.

Date Paid	Check No.	Salary	Amount and Purpose Expense Refunds	On Properties and Debts
2- 5	785	400.00		
3- 8	793	400.00		
3-26	797	400.00		
5- 1	806	400.00		
5-31	813	400.00		
7- 9	821	400.00		
8- 2	829	400.00		
9- 5	837	400.00		
10- 2	843	400.00		
11- 1	852	400.00		
		$4,000.00	.00	.00

1579 Wichita Royalty Company Checks Issued to Bearer or G. W. Peckham and Cashed, January 1, 1923, to November 7, 1929.

Date	Number	Amount	Purpose
1-16-23	1195	500.00	Traveling Expense
3-20-23	1272	500.00	Traveling Expense
6- 1-23	1339	500.00	Salary
7- 3-23	13	500.00	Salary
11-30-23	115	500.00	Salary
3- 1-24	180	30.95	Insurance on Car
5-31-24	221	500.00	Salary
7-20-25	398	10.00	Revenue Stamps
11- 6-25	438	4.75	Revenue Stamps
5- 3-26	497	400.00	Salary
8-20-26	529	400.00	Salary
12-22-26	556	700.00	For Highland Irrigation
9-30-27	643	400.00	Salary
10- 1-27	644	62.85	Miscellaneous
1-14-29	778	21.63	Taxes
	Total	$5,030.18	

1580 Items Alleged by the Royalty Company as Transfers of Funds to the Account of G. W. Peckham, but, in Reality, Not Transfers and Not Included in Our List of Funds Transferred to Peckham.

Check No.	Date	Payee	Purpose	Amount
1253	3-10-23	City National Bank	To B. L. Fain for Property #71	2,500.00
46	8-14-23	W. H. Peckham	For debt due W. H. Peckham	9,219.51
48	8-14-23	Do	Do	1,033.33
47	8-14-23	B. L. Fain	For debt due B. L. Fain	1,560.00
49	8-14-23	Do	Do	4,120.97
101	11-14-23	City National Bank	Not deposited in Peckham acct.	2,200.00
102	11-14-23	Do	Do	500.00
154	2- 2-24	B. L. Fain	Issued to B. L. Fain	12,000.00
237	7- 2-24	Security Nat'l Bank	Not deposited in Peckham acct.	11,000.00
246	7-24-24	Do	Do	10,000.00
479	3- 6-26	Do	Do	6,000.00
557	12- 7-26	City National Bank	Not deposited in Peckham acct.	1,920.00
602	4-23-27	B. L. Fain	Issued to B. L. Fain	1,000.00
607	5- 6-27	Do	Do	500.00
610	5-16-27	Do	Do	1,000.00
		Total of Such Items		$64,553.81

1581 Items Included in Our List of Funds Transferred from the Royalty Company to G. W. Peckham's Account at the City National Bank But Not Alleged as Transfers by the Royalty Company.

Check No.	Date	Payee	Purpose	Amount
1194	1- 7-23	City National Bank.....	Payment on Property #52.....	$1,040.00
1238	2-21-23	Do	Do	1,046.66
1282	4- 2-23	Do	Due on Property #70.....	1,006.67
		Total		$3,093.33

1582 The Witness:

Plaintiff's Exhibit 209, is an analysis of the Wichita Royalty Company's balance sheet and the indebtedness to the City National Bank for the years 1923-1929 inclusive. In the column at the left I show the balance sheet as shown by their records. In the column to the right I show the balance sheet after adjustment, that is, after eliminating appreciated value which they added to their properties, and after setting up the depletion in the year in which it occurred instead of waiting until 1927 and setting it up. That made a difference between the surplus of $37,679.61 as shown by their records, and the deposit of $440,167.56, as shown after those adjustments were made. Mr. Peckham took office January 1, and this is made up at the close of the first fiscal year after he took office, which was May 31, or five months after. I took the depletion on the books, which could readily be done from the books of the company and the information contained. The next one is a balance sheet on May 31, 1924, and the next one May 31, 1935, likewise, the balance sheet during the whole period of time that Mr. Peckham was in office as trustee. This shows the notes payable during this period of time at the close of each year, and shows that in 1923 there were dividends paid in the sum of $151,998.00. Prior to the time George Peckham took charge, the dividends paid for that fiscal year were $78,981.57, and subsequent to the time he took office and before the close of the books May 31, there was paid $73,017.32 dividends. For the fiscal year 1924

1583 there were paid $24,447.45 dividends. Dividends for 1925 amounted to $33,393.27. Dividends for 1926 amounted to $16,329.80—that is the last dividend as shown by their records.

The next two exhibits, is an analysis of the funds of G. W. Peckham to pay his personal indebtedness to the City National Bank from January 1, 1923 to November 17, 1925; and from November 17, 1925 to October 25, 1929, marked "Plaintiff's Exhibits 210 and 210a".

Plaintiff's Exhibits 210 and 210a represent an analysis of the source of funds applied by G. W. Peckham to pay his personal indebtedness to the City National Bank from January 1, 1923 up to and including October 25, 1929,—in two separate reports. During most of this time Mr. Peckham was a customer and borrowers from the City National Bank and kept a deposit account in that bank during that time. He kept a note account or a liability account with that bank practically the whole period of time. The Wichita Royalty Company also kept an account, a deposit account, with the City National Bank during that period of time.

Plaintiff's Exhibit 210 is an analysis of the source of funds applied to George Peckham's account to pay his personal indebtedness to the City National Bank, that is, as to whether he used personal funds or transferred funds with which to pay his personal indebtedness. In other words, it is a tracing of the funds. By personal funds, I mean funds that came from other sources than by transfer from the Wichita Royalty Company. The principles followed in attempting to trace those funds that went to pay Mr. Peckham's personal indebtedness to the City National Bank, I used what is called the minimum balance rule, which my schedule shows. I will read what it shows, what I understand it to be. "The schedules here in submitted present an analysis of the source of the funds used by G. W. Peckham from his individual account with which to pay his personal indebtedness to the City National Bank, beginning January 1, 1923, and ending October 25, 1929, which is the last date herein recorded on which G. W. Peckham made a payment on his personal indebtedness to the bank."

1584

In making this analysis, I have adopted what is known as the "minimum balance rule, applying only those funds (against the individual account to the trust) which are clearly earmarked and traceable as trust funds, treating all other funds withdrawn and not clearly identified as for trust purposes, as funds used for individual pur-

poses, and when the trust funds have been reduced or dissipated, treating subsequent deposits of personal funds made in due course of business not as a restoration of trust funds." In other words, I followed the rule in the case of Maryland Casualty Company versus City National Bank, 29 F (2) 662, to the effect that when trust money has been deposited in the individual account and it must be determined how much of it remains on a given date, the minimum balance existing between that date and the date of deposit is the amount remaining and identifiable as a trust fund. That is the rule adopted.

1585 The second page is a statement of the payments made from G. W. Peckham's personal account on his personal indebtedness to the City National Bank from January 1, 1923 to November 17, 1925. It shows the date the payments were made and the amounts which he paid to the bank and the summary of what funds they were paid from. Whether they were trust funds or alleged to be trust funds or from personal funds. That is a statement from February 6, 1923 to July 7, 1925, being the first and last date on which payments were made on his account during that period, set out in this schedule. I divide this up into two periods, because when we started to work on this, we had only a list of the items of which they complained, coming down to date from November 17, 1925. Then later they set up numerous items going back to January 1, 1923 therefore we made this up in sections, embracing the separate dates, and it carries all the way through down to the date of Peckham's death.

From February 6, 1923, to July 7, 1925, applying the minimum balance rule, there were no payments made to the City National Bank during that period of time wherein any of the transferred funds were used for the payment of Peckham's personal indebtedness, that is, transferred from the Wichita Royalty Company. I have made an analysis of that. I used Mr, Peckham's individual ledger sheet, and identified the transfer of

funds from the Royalty Company in each of those instances.

Exhibit B on this report is an analysis of G. W. Peckham's indebtedness to the City National
1586 Bank for the period, showing the amount and period, by years, and by dates, and the dates on which he borrowed it, interest charges, and the amount he paid to the City National Bank by years for the period. The payments are shown in detail on the preceding page. Beginning on the fifth page of this Exhibit, I make an analysis of the source of funds from which each of those payments were made. The first payment on February 6, 1923, and the amount is $594.75. The last deposit of trust funds prior to that payment was January 16, 1923, $1,040.00. The opening balance of Peckham's on the day that he made the payment of $594.75 was $3,532.35. On that date he deposited $629.30 of that money in the bank, which was not from the Wichita Royalty Company's account. On that date, he had, after making that deposit, $4,161.65.

I make the statement in this report, the maximum possible trust fund on deposit in this account, and 2-6-23, minimum balance on 2-2-23, was $244.53; that was the minimum balance, the lowest balance in Mr. Peckham's account between the date of the last deposit of $1,040.00 on January 16, and the date on which this payment was made to the bank, which was February 6, 1923, and was $244.53, on February 2, 1923, which would be the minimum balance between those two dates. The largest amount of trust funds which he could have had on hand would have been $244.54. He had a balance of $4,161.65, from which is deducted the $244.53, leaving a balance of $3,917.12, on personal funds, with which to
1587 pay this $594.75 to the City National Bank.

The next payment, on March 5, 1923, he paid the City National Bank $1,000.00, on March 6, 1923, he paid them $500.00, on March 8, he paid them $500.00, and on March 8, he paid them another $500.00. Now, the last deposit of trust funds to the account of G. W.

Peckham prior to each of the above dates, was on February 21, 1923, and amounted to $1,046.66, and on the date of the first payment to the City National Bank, being March 5, 1923, he had on deposit $5,068.62, and then if you deduct from that amount on deposit the total amount of trust funds, he deposited on the last occasion, of a deposit of trust funds, he has a personal balance left of $4,021.96, with which to pay $1,000.00 to the City National Bank on March 5, 1923. On March 6, the date of the $500.00 payment to the bank, he had a balance on deposit of $3,233.54; if from that balance you deduct the entire trust fund deposited on the occasion of such last deposit, which was February 21, 1923, there remained $2,186.88 of personal funds with which to pay this $500.00 to the City National Bank; on March 8, the date he made the two $500.00 payments to the City National Bank, he had on deposit $4,619.84, and if from that amount you deduct the total of the last deposit funds, which was on February 21, 1923, there remains a balance of $3.573.18, of personal funds with which to pay this $1,000.00 to the bank. In other words, he had not made any transfer of funds subsequent to February 21, 1923, and prior to the last payment on March 8, 1923.

The next payment he made on his personal
1588 indebtedness is on April 23, 1923, $4,094.15. I am treating all of these transfers whether Peckham rightfully transferred them or wrongfully transferred them, as transfers of trust funds to his individual account. I made an analysis later on, showing the tracing of those funds, and what they were for.

The last deposit of funds of the Wichita Royalty Company to the account of G. W. Peckham, prior to April 23, 1923, was on April 10, 1923, amounting to $2,516.67; on April 23, 1923, the balance on deposit of Peckham's account was $5,046.25. The minimum balance between April 10, the date of the last deposit of trust funds, and April 23, the date of the payment to the bank was $316.63, on April 11. If from the opening balance, $5,046.25,

there is deducted this minimum balance $316.63, which leaves a balance of $4,729.62, of personal funds with which to pay this $4,095.15 to the City National Bank. The next payment he made, May 15, 1923, $1,008.55. The last deposit of funds from Wichita Royalty Company to the account of G. W. Peckham prior to May 15, 1923, was on May 11, 1923, amounting to $2,533.33. The balance on deposit to Peckham's account on May 15, 1923, was $7,492.63. He paid the bank $1,008.55, and the maximum possible trust fund on deposit on April 15, 1923, would be $2,533.00, which if you take from his balance of $7,496.63, would be more then four dollars, enough money on hand with which to pay the City National Bank from transferred funds.

He paid the City National Bank on June 22,
1589 1923, $3,015.60; on August 10, 1923, he paid the City National Bank $3,985.78; on November 13, 1923, he paid the City National Bank $1,000.00; on November 20, 1923, he paid the bank $2,000.00; on November 22, 1923, he paid the bank $1,000.00; on November 30, 1923, he paid the bank $1,555.82. No trust funds were deposited to the account of G. W. Peckham between May 11, 1923, and January 19, 1924. The last deposit of such funds, prior to each and all of the above payments, was on May 11, 1923, and was fully accounted for on that date. It is, therefore, evident that all of the above payments made to the City National Bank were made from G. W. Peckham's personal funds on deposit in his personal bank account, and the minimum balance between May 11 and June 22, the date of the first payment to the bank was $253.85; and the minimum balance on each of the other dates on which payments were made to the City National Bank was $37.99, being on June 23, 1923. I will explain, when I how the last deposit of trust funds were fully accounted for, on May 11, the Wichita Royalty Company gave G. W. Peckham check for $2,533.33, being a payment upon a royalty which they bought from G. W. Peckham, and from which royalty he transferred to the royalty com-

pany—that is Grimshaw Royalty No. 71—which cost $7,500.00. Peckham paid $8,000.00 for it, that is, originally, then on the sale price to the Wichita Royalty Company B. L. Fain got $2,500.00, making Peckham's cost $10,500.00, then he sold that to the royalty company for $7,500.00—that is, one-half of it. That property
1590 produced more than it cost, I don't remember — exactly.

The next transaction on February 5, 1924, G. W. Peckham paid to the City National Bank $67.67. The last deposit of trust funds to this account prior to February 5, was on February 2, 1924, and for $12,000.00, and that being a $12,000.00 check made payable to B. L. Fain, B. L. Fain indorsed to G. W. Peckham and G. W. Peckham deposited it in his personal account; and this $12,000.00, although it did not come directly from the Wichita Royalty Company to G. W. Peckham, was accounted for by G. W. Peckham, transferred to the Wichita Royalty Company, the interest of the Wilson Royalty, being their property No. 75, which they later issued a check as to the balance of the purchase price—in other words, that was recompensing Peckham for the payment of the Wilson Royalty. I do not know the date he acquired the royalty, but on April 22, 1924, he conveyed it to the Wichita Royalty Company, that interest which they bought from him, represented by this number. He had on deposit on that day, $2,593.62, with which to pay $67.67 to the City National Bank. The minimum balance was actually $39.99, because that $12,000.00 came from B. L. Fain, the check was made payable to B. L. Fain and it was set up here, merely to show that those items which they claim were transferred to George Peckham.

The next item was the payment to the City National Bank on February 21, 1924, of $8,022.28. Of that last deposit of trust funds to the account of G. W.
1591 Peckham prior to February 21, 1924, was February 11, 1924, amounting to $2,500.00. On February 21, 1924, there was a total fund on deposit in

G. W. Peckham's account of $15,936.79, from which if you deduct the maximum possible trust fund in this account on February 21, 1924, which was the minimum balance on February 19, 1924, and amounting to $1,398.93, you have left personal funds on deposit amounting to $14,537.86, with which to pay this $8,022.28 to the City National Bank.

The next payment, was March 17, 1924, Peckham paid the bank $10,000.00. The last transfer of funds from the royalty company's account prior to that payment was February 9, 1924, $2,500.000. Mr. Peckham had on deposit $10,466.33, at the opening of business on that date, and on the same day he deposited personal funds of $10,625.00, making a total funds on deposit that day, $21,091.33; and if from that account you deduct the minimum balance which was on February 19, 1924, that amounts to $1,398.93, you have $19,692.40 of personal funds left on deposit in his personal account with which to pay the City National Bank this $10,000.00.

The next item after that date, paid to the City National Bank on March 18, 1924, amounted to $10,026.75; and on the above date, March 18, 1924, trust funds were deposited to the account of G. W. Peckham in the sum of $9,250.00, and then was the first such deposit since February 9, 1924. An analysis of the funds in G. W. Peckham's account on March 18, 1924, the date of this payment to the bank, reveals he had a deposit an opening balance of $11,033.48. On that day he de-
1592 posited personal funds totaling $78,750.00 and this trust item of $9,250.00, making a total deposit of $88,000.00, added to his opening balance makes a total funds on hand, $99,033.48, and deducting the deposit of trust funds amounting to $9,250.00 leaves a balance of $89,783.48 of personal funds with which to pay this $10,026.75 to the City National Bank. This item of $9,250.00 represents the balance of the purchase price of one sixty-fourth royalty in the Wilson Royalty bought by the Wichita Royalty Company. G. W. Peckham acquired this property on April 22, 1924, and con-

veyed the same to the Wichita Royalty Company—that is their interest in the Wilson royalty, Property No. 75.

The next item, May 1, 1924, amounted to $2,038.07, and the last deposit of trust funds to the account of G. W. Peckham prior to May 1, 1924, was on March 18, 1924, and amounted to $9,250.00. The funds on deposit in G. W. Peckham's account on May 1, 1924, the date of this payment to the bank, was $4,874.60, and deducting from that amount the minimum balance amounting to $457.19, which existed on March 27, 1924, leaving a balance of $4,417.41 of personal funds on deposit with which to make this payment of $2,048.07 to the City National Bank.

The next payments which I show are two items, one June 7, 1924 for $4,027.47, and another payment of $1,000.00 on the same date.

The last deposit of trust funds to the account of G. W. Peckham prior to June 7, 1924 was on March
1593 18, 1924, and amounted to $9,250.00. That is the Wilson Royalty purchase. The funds on deposit to Peckham's account on June 7, 1924, was $1,256.39, on that date he made a deposit of personal funds in the sum of $5,000.00, making a total balance of $6,256.39 in his account; deducting from that amount the minimum balance of $457.19, existing on March 27, 1924, there is left $5,799.20 of personal funds on deposit in this account with which to pay this $5,027.47 to the City National Bank.

The next item, June 11, 1924, G. W. Peckham paid to the City National Bank, $234.22, the last deposit of trust funds to the account of Peckham prior to June 11, 1924, was on March 18, 1924 amounting to $9,250.00. The funds deposited in Peckham's account, of June 11, 1924, the date of this payment to the bank was $1,136.72. Deducting from that amount the minimum balance of $457.19, which existed on March 27, 1924, there was left on deposit in Peckham's personal account $679.53 of peronal funds with which to pay this $234.32 to the City National Bank.

He made the next payment on July 3, 1924, to the City National Bank, on the above date trust funds were deposited to the account of G. W. Peckham amounting to $11,000.00. Those items were not trust funds, but they were alleged as trust funds, and I set them up, and treated them as such. This is the $11,000.00 check made payable to the Security National Bank and it did not go into Mr. Peckham's account, but they allege it as transfers, and we set it up as transfers, trying
1594 to set up all the things they alleged. If you treat this $11,000.00 as coming in an indirect way through the Security National Bank or some other manner, into the City National Bank, the result would be that Mr. Peckham's payment to the bank was paid from his personal funds, regardless of the $11,000.00. I arrive at that in this manner—On July 3, 1924, there on deposit opening balance in Peckham's account of $7,-469.08, on that date there was deposited two items, one for $11,000.00 and another for $321.82, making a total deposit of $11,321.82. which, added to his opening balance, made funds on deposit in his account of $18,790.90. Now, from that sum you deduct the entire $11,000.00, it leaves $7,790.00 of personal funds with which to pay the City National Bank, $967.67.

Direct Examination.

By Mr. Morrow:

The $11,000.00 represented by Wichita Royalty Company's check No. 237, issued on July 2, 1924, and payable to the Security National Bank for that amount, and purports to have been given for the purchase of the White lands. That check was cashed at the Security National Bank and that check was not deposited in George Peckham's personal account, nor did it get into his personal account in the City National Bank. I am assuming the $11,000.00 which he deposited in the Security National Bank got into the City National Bank in some fashion, because they allege it. The Wichita Royalty

Company allege that in their petition as trans-
1595 fers, and I wanted to cover it and furnish all of those items which they allege, any portion of those items, which they allege were used to pay Peckham's personal debts, whether or not they were transferred.

In the first exhibit I identified, I pursued the same policy I am pursuing here, assuming all of the items they complain of were traceable items—in that schedule I included the $11,000.00 and the $10,000.00 which was issued twenty-two days afterward and handled in the same manner; and I included that check that was payable to B. L. Fain, indorsed by B. L. Fain and deposited to the account of George W. Peckham.

Direct Examination.

By Mr. Humphrey:

I treated this $11,000.00 in accordance with their petition, although my investigation disproved that fact. The check was drawn on the City National Bank and payable to the Security National Bank and cashed direct and not deposited in the City National Bank. If the proceeds of that sum got over here, it got over here through some other method than the check itself, probably to have been correct, I should have stated in calling these items trust funds, I should have said alleged trust funds, instead of calling these items transfers, I should have called them alleged transfers. It is my analysis that none of that payment of $967.67 was a part of the $11,000.00 deposit. After eliminating the entire $11,000.00 he had personal funds on deposit remaining
of $7,790.90, with which to pay this check of
1596 $967.67, which he gave the City National Bank on his personal indebtedness.

The next payment to the City National Bank I have grouped in two payments, one August 2, 1924, amounting to $57.77, and another payment on August 5, 1924, amounting to $117.57. The last deposit of trust funds

to the account of G. W. Peckham prior to August 2, or August 5, 1924, was on July 3, 1924, and amounted to $11,000.00, and this is the $11,000.00 we have just finished discussing. That was not, in fact, a transfer. The total funds on deposit in George Peckham's account on August 2, 1924, the date of the first payment to the City National Bank, was $14,308.31, and after deducting the maximum possible trust funds on deposit in this account, amounting to $9,241.65, and being the minimum balance on July 23, 1924, there is left $5,138.66 of personal funds with which to pay this $58.77 in the City National Bank. Now, on August 5, 1924, the date of the second payment to the City National Bank, Mr. Peckham had on deposit in his personal account $16,453.34. Deducting from this amount the sum of $9,241.65, being the minimum balance on July 23, between the date of the last deposit and the date of the payment to the bank, leaves a balance of $7,210.69, of personal funds on deposit in his account, with which to pay the bank this $117.57.

The next payment was made on October 30, 1924, and amounted to $12,500.00. The last deposit of trust funds to the account of G. W. Peckham prior to October 30, 1924, was on July 3, 1924, and amounted to $11,000.00 and this is the $11,000.00 we discussed a while ago. That is not, in fact, a transfer from the royalty company account direct to Peckham's account. On October 30, 1924, the date of this payment to the bank, Mr. Peckham had an opening balance of $1,284.29 on deposit in his personal account. On that day he deposited personal funds in the sum of $12,563.74, making a total of funds on deposit in his personal account of $13,843.03. Deducting from that the maximum possible trust fund on deposit in this account on this date, amounted to $667.68, and being the minimum balance as of October 27, 1924, leaves a balance of personal funds on deposit in his personal account of $13,180.35, with which to pay this $12,500.00, to the City National Bank.

1597

The next item, I grouped several payments, being four in number, to the bank, November 3, 1924, he paid to the bank $5,100.00; November 10, 1924, he paid to the bank, $200.00; November 29, 1924, he paid the bank $15,069.99; December 13, 1924, he paid the bank $12,016.00. The last deposit of trust funds to the account of G. W. Peckham prior to each of the above dates was on July 3, 1924, amounting to $11,000.00, and being the $11,000.00 discussed a moment ago. The funds on deposit to Mr. Peckham's account on November 3, 1924, the date of the first payment to the bank was $6,138.95; deducting from that amount the minimum balance of $626.18, on October 28, 1924, leaves a balance of personal funds on deposit to his account, on November 3, 1924, of $5,512.77, with
1598 which to pay the bank this $5,100.00. On November 10, 1924, Mr. Peckham had on deposit in his account $14,816.00. Deducting from this amount the minimum balance as shown on October 7, 1924, amounting to $2.00, leave a deposit, his personal account, $14,814.00 of personal funds with which to pay this $200.00 to the City National Bank. On November 29, 1924, Mr. Peckham had on deposit in his personal account $18,383.27. Deducting from this amount the minimum balance of his account as shown on October 7, 1924, amounting to $2.00, leaves $18,381.27 of personal funds on deposit in his personal account, with which to pay this $15,069.99 to the City National Bank. On December 13, 1924, the date of the last payment of this group, he had on deposit in his personal account $16,594.02, and deducting the minimum balance of $2.00 in his account on October 7, 1924, leaves a balance on deposit in his personal account of $16,592.02, of personal funds with which to pay this $12,000.00 to the City National Bank.

The next group, of four payments, to the City National Bank, the first being February 5, 1925, amounting to $10,200.00; the next being on February 18, 1925, amounting to $15,210.00; the next being April 17, 1925, amounting to $12,242.66. This last amount being two items, one for $12,162.66 and another of $80.00. The last deposit of

trust funds to the account of G. W. Peckham prior to either of the above dates, was on December 23, 1924, and amounted to $695.00. That is the Curtis Lane Royalty F. O. Harrell transferred to the Wichita Royalty
1599 Company. The $695.00 check was made payable to G. W. Peckham and states, "To purchase 1/16th of 1/8 royalty in 125 acres known as block 46, of the Mead L. M. Pasture subdivision." I presume Mr. Peckham paid Mr. Harrell for this royalty, but I do not know. I have not identified the payments from Peckham to Harrell. They had considerable transfers of money passing between them.

February 5 to April 7, I have a sum aggregating $37,000.00. The last deposit of trust funds was then $695.00, which was the consideration for the Curtis Lane Royalty, which the Wichita Royalty Company acquired from F. O. Harrell. The bank did not get any of that money, under the minimum balance rule.

I find, on February 5, 1925, the date of the first payment by Peckham to the bank, G. W. Peckham had on deposit in his personal account $14,422.00. Deducting from that the entire deposit of $695.00, being the last deposit of trust funds applied to this date, leaves a balance of $13,705.22 of personal funds deposited in his personal account, with which to pay this $10,200.00 in the City National Bank. On February 18, 1925, the date of the second payment to the bank, G. W. Peckham had $20,821.18, on deposit in his personal account, and deducting from that sum the entire $695.00, in the last deposit of the trust funds to his account, prior to this date, leaves a balance of $20,126.14 on deposit in his personal account, with which to pay this $15,210.00 to the City National Bank.

On April 7, 1925, G. W. Peckham had on deposit
1600 in his personal account $39,029.79. Deducting from this amount the entire $695.00, being the last deposit of trust funds prior to the date of this payment to the bank, leaves a balance of $38,334.79. The funds on deposit in Peckham's personal account with which to pay the bank this $12,242.66.

The next payment, a group of three items on May 12, 1925, he paid the bank $4,056.00. On June 6, 1925, he paid the bank $220.00. On June 11, 1925, he paid the bank $66.67. The last deposit to trust funds to the account of G. W. Peckham, prior to May 12, or June 6, or June 11, the three dates on which he made these payments to the bank, was on May 5, 1925, amounting to $2,500.00. Accounting for this $2,500.00 on May 6, the date he got that last deposit from the Wichita Royalty Company, he issued his personal check to Ray and Massie in the sum of $2,500.00, and acquired from Ray and Massie the identical property and Ray and Massie conveyed to the Wichita Royalty Company the identical property that this $2,500.00 stated it was issued for. That is, which the check and the voucher showed that it was issued for. That property never came through Peckham's name. It was the Routon property, sold by Ray and Massie to Wichita Royalty Company, Peckham paid $2,500.00 for it, and Wichita Royalty Company issued him its check for that amount and the voucher showed it was for that royalty.

On May 12, 1925, G. W. Peckham had on deposit in his personal funds totaling $5,451.37, with which to
1601 pay the City National Bank this $4,056.00. On June 6, the date of the second payment to the bank, G. W. Peckham had on deposit in his personal account $1,919.04 of personal funds with which to pay this $220.00 to the City National Bank. On June 11, 1925, G. W. Peckham had personal funds on deposit in his personal account at the City National Bank amounting to $602.54, with which to pay this $66.67 to the City National Bank. There was no use of trust funds whatever in the payment of these two sums, he took their check today and he issued his check today. I have an analysis of that letter.

The next item, July 7, 1925, G. W. Peckham paid the City National Bank $12,072.00. The last deposit of funds from the Wichita Royalty Company into the account of G. W. Peckham prior to July 7, 1925, was on June 29, 1925, and was for the purchase being property No. 80,

payment to Peckham and part of the purchase price on this property, amounted to $5,000.00. On July 7, 1925, G. W. Peckham had on deposit in his personal account $20,198.42. Deducting from that the entire $5,000.00 deposit, being the last deposit of trust funds prior to the date of this payment to the bank leaves a balance of $15,198.42, with which to pay this $12,070.00 to the City National Bank. That is property No. 80, on the Anderson Ranch and it is conveyed to the Wichita Royalty Company in two deeds, embracing 217 acres in Archer County, Texas. It cost $11,000.00. Mr. Peckham lacked six dollars and some cents paying that amount and we were unable to find the expense to which he went in
1602 acquiring this property. That $6.00 is one of the payments that Peckham advanced for the purchase price, I do not say that he did not actually pay this other $6.00. This completes the transactions and analysis of these payments to November 17, 1925, up to the date the first suit was filed.

Continuing the tracing of these funds, on Plaintiff's Exhibit 210a, that brings it on from the 17th of November, 1925, down to George Peckham's death. The total payments made, Exhibit A, of Plaintiff's Exhibit 210, is an analysis, statement of the payment of the principal and interest on Peckham's note to the bank, showing under the minimum balance rule, whether or not any transferred funds, or alleged transferred funds, were used for the payment of any part of that indebtedness. Exhibit A, of Plaintiff's Exhibit 210-a shows the total amount of payment from November 17, 1925, to October 25, 1929, the last payment that Peckham made before his death, amounting to $57,879.21. Then following the minimum balance rule, $1,102.71 of that was paid from the funds transferred from the account of the Wichita Royalty Company to Peckham's individual account. The amount paid from Peckham's personal funds was $56,776.50. Exhibit B of the same exhibit reflects an analysis to G. W. Peckham's indebtedness, City National Bank from November 17, 1925, to October 25, 1929, the date of the last payment

he made on the obligation. It shows the amounts borrowed, date borrowed, interest charged by the bank and the payments made by Peckham on his account.

1603 This shows that Mr. Peckham owed the bank at the time of his death $24,974.42. He owed the bank $27,500.00 on November 17, 1925. The sum varied, up and down.

Following Exhibit B, on page 1429 of the same exhibit, 210-a, I have an item of $1,007.23, paid to the City National Bank by G. W. Peckham on November 17, 1925, the analysis is; the last deposit of trust funds prior to November 17, 1925, was paid on October 8, 1925, and amounted to $5,500.00. This $5,500.00 was a check issued to G. W. Peckham by the Wichita Royalty Company and against which G. W. Peckham made the following disbursements; he purchased property No. 81, $2,252.25, and he purchased revenue stamps to go on that instrument, $2.52; commission paid on the purchase of that property, $225.00; legal expenses incurred in examining the title to that property, $25.00; to purchase property No. 82, $1,500.00. Funds returned to the Wichita Royalty Company, $1,500.00. Making a total of $5,504.75, accounted for by G. W. Peckham, out of this $5,500.00. This $5,500.00 went to the purchase of the Mathis royalty and to pay the expenses incident to the purchase of it. Peckham paid $4.75 more than the check amounted to, and he was refunded that much money by the check that has been offered in evidence here. Then $1,500.00 of that item went to buy the Kunkle royalty, which produced $7,000.00 or $8,000.00 worth of oil, probably over $9,000.00 of oil. The $1,500.00 was actually returned by Peckham to the Wichita Royalty Company as shown by their receipts and Peckham's checks. So the $5,500.00 is unquestionably accounted for.

1604 I will go ahead and analyze it, on November 17, 1925, the date of this payment to the City National Bank, G. W. Peckham had on deposit in his personal account, and after making the payments I have outlined in purchasing the properties for Wichita Royalty

Company, he had on deposit $3,216.76 of personal funds with which to pay the City National Bank, this $1,007.23; and applying the minimum balance on that day, he had on deposit $3,216.76, from which you deduct $604.40, being the minimum balance in his account on November 2, 1925, leaves a balance of $2,612.36 of Peckham's personal funds with which to pay this $1,007.23, to the City National Bank. In tracing the trust funds, where I find funds that Peckham paid out of his personal account for trust purposes, I classify them as properly paid, and that is what I did in this, the purchase of property No. 81, which was the Mathis property, he actually paid that $2,252.25, out of his personal account for this royalty, which was conveyed to the Royalty Company direct. He purchased revenue stamps $2.50. I heard Mr. Rogers' testimony as to the $225.00 commission, and I saw Mr. Peckham's checks. Also with reference to the $25.00 legal expense and this check to E. C. DeMontel of $71.00, I heard that testimony. I did not identify the $1,500.00 check for the purchase of the Kunkle royalty but he gave his check for that amount to B. L. Fain for the Kunkle royalty, and he transferred it to the royalty company, and the voucher of the royalty company shows that their
1605 $5,500.00, checks for $1,500.00 of which was for the Kunkle royalty, then there was an additional $1,500.00 including the $5,500.00 for royalties not described. I examined the receipts and saw Mr. Peckham's checks for this royalty.

The next payment, on February 13, 1926, when Peckham paid $550.00 to the City National Bank. The last deposit of trust funds to G. W. Peckham's account prior to February 13, 1926, was on January 18, 1926, and amounted to $15,769.07. On February 13, 1926, G. W. Peckham had on deposit in his personal account $22,750.27; from that amount deduct the balance of $2,996.80, which G. W. Peckham had on deposit on January 18, 1926, and the entire deposit of $15,769.07, making a total deduction of $18,765.87, leaves $3,984.40, of unquestionably personal funds with which to pay this $550.00 to the City National

Bank. His minimum balance was $1,801.71 on February 3, on May 15, 1926, he paid $550.00 to the City National Bank, I arrived at that analysis as follows; the last deposit of trust funds to G. W. Peckham's account prior to May 15, 1926, was on March 31, 1926, and amounted to $7,500.00; on May 15, 1926, George Peckham paid from his personal account to the Marlborough Addition, as contemplated in the above deposit, the sum of $7,500.00—he applied that amount for the purpose that the original voucher shows it was given for. The check of the Wichita Royalty Company dated March 1, 1926, payable to the City National Bank for $7,500.00, issued by E. E. Scannell for trustee, represents this deposit of $7,500.00 to the credit of G. W. Peckham. The voucher ac-
1606 companying this check shows that it was to apply on a half interest in improving the Marlborough Addition, improvement consisting of lights, water, gas, sewerage and paving the street, etc. The check marked "Defendant's Exhibit 116, is the check represented in this deposit. I have Mr. Peckham's bank statement with the Security National Bank, I have a memorandum showing the check for $7,500.00, payable to the Marlborough Addition, and a corresponding withdrawal of that amount on April 16, 1926. The Marlborough Addition books show on the cash receipts, page 2, line 4, reads as follows: "April 15, 1926, Security National Bank. Source, account G. W. Peckham investment $7,500.00 received, on G. W. Peckham's ledger account in the Marlborough Addition books, it shows on line 3, $7,500.00 credited to G. W. Peckham's investment account." The books of the Marlborough Addition, statement of the Security National Bank, memorandum slip accompanying that statement shows that Peckham issued his check for $7,500.00 to the Marlborough Addition. The Marlborough Addition's book account shows that there was deposited $7,500.00 from April 15 to the date these items were run through their books and paid, a day later, from his bank account. That is the basis that I found in my report that Peckham used the $7,500.00 evidenced by

this check for the purposes for which it was intended. Regardless of that fact, there is no use of funds, of this transfer of this $550.00—on May 16, 1926, the date he made this payment to the City National Bank, he had on deposit $916.57; deducting from that the mini-
1607 mum balance existing in his account on May 5, of $187.48, he had left $729.09 of personal funds with which to pay this $550.00 to the City National Bank.

The next item, August 5, 1926, G. W. Peckham paid the City National Bank $5,500.00. The last deposit of trust funds to G. W. Peckham's account prior to August 5, 1926, was on August 2, 1926, amounting to $4,000.00. On August 10, 1926, with no intervening application of trust funds to trust purposes, the balance in Peckham's account was $3,628.93, which left payment on August 10, 1926, of $550.00, made a payment from trust funds transferred from the Wichita Royalty Company, which was subsequently returned to their intended purpose on October 15, 1926, in other words, he accounted for them.

Agreement.

Mr. Rogers:

It appears from the report of the auditor, that he has drawn certain legal conclusions. May we agree that I object to all of the conclusions and all of the statements in that report, that express an opinion as to the effect of a transaction, as being beyond the function of the witness not the subject matter of expert testimony, or any other character of testimony. The transactions speak for themselves, involving questions of law, and at least questions of mixed law and facts, and that this objection, without having to be repeated, may from time to time apply to all of the testimony of the witness.

Mr. Humphrey:

That is agreed.

1608 The Witness:

This $550.00 came out of the transfer of $4,000.00, but the $4,000.00 was subsequently accounted for on October 15, 1926. The basis of my statement that the $4,000.00 was accounted for, is check No. 525, dated August 2, 1926, for that amount, the basis for that statement is that this amount is part of a series of payments which the Royalty Company paid G. W. Peckham, with which he was in turn to pay a maturing note. The voucher notation shows, "To apply on note due 9-19-26, for land in fee." That note was $9,595.74, principal and interest, they issued other checks in addition to the $4,000.00 check, which aggregated in all the above amount. All of the checks were deposited by Peckham to his personal account in the City National Bank. Then on October 15, 1926, he paid the Highland Irrigation Company $9,595.74, being the principal and interest on a note maturing against the Wichita Royalty Company land in fee. Here is the deposit slip, I do not have the check. I have Mr. Peckham's ledger account showing on October 15, 1926, a check was drawn for $9,595.74, against the individual account of Mr. Peckham in the City National Bank. I have the original deposit slip to the credit of the Highland Irrigation Company showing that the Highland Irrigation Company deposited a check drawn by G. W. Peckham on his account, in the exact sum of the withdrawal of $9,595.74, this is shown by Plaintiff's Exhibit 90, and by Plaintiff's Exhibit 91, deposit ledger account of G. W. Peckham with the City National Bank. Other items that went to make up this account, in addition to the

1609 $4,000.00 check, is a check issued by the Wichita Royalty Company on August 27, 1926, being No. 532, and amounting to $4,357.58. That is No. 532. Another check, No. 556, issued December 22, 1926, payable to G. W. Peckham for $700.00, and check No. 556a, issued on December 22, 1926, for $538.16. These checks were issued to Peckham to pay this $9,595.74 matured against land in fee. All of the above checks were signed by E. E. Scannell for the Wichita Royalty Company and drawn on the

account of the Wichita Royalty Company, two of them payable to G. W. Peckham and two of them to the City National Bank. The voucher notation on each of those four checks is as follows: No. 525, "Notes payable to apply on note due 9-19-26 to Highland Irrigation Company for land in fee." No. 532, the voucher notation, "Notes payable to apply on note due 9-19-26, to Highland Irrigation Company, for land in fee, $3,738.50, interest expense on above note, eight percent one year, $619.08." The total amount of the check was $4,357.58. Check No. 556, notation on voucher, "Interest expense to apply on two notes of $7,738.50, at the rate of eight percent per annum, this interest applying on period 9-19-25, to 9-19-26, Highland Irrigation Company notes." Check No. 556a, the voucher notation has this, "Interest expense to apply on two notes of $7,738.50, at the rate of eight percent per annum, this interest applying on period 9-19-25 to 9-19-26, Highland Irrigation Company note for balance of interest paid, see check No. 556." Those four checks aggregate $9,595.74, the same amount as Peck-
1610 ham's check paid to the Highland Irrigation Company on October 15, 1926.

The next payment, September 30. 1926, G. W. Peckham paid the City National Bank $503.10. The last deposit of trust funds to G. W. Peckham's account prior to September 30, 1926, was August 27, 1926, amounting to $4,357.58. On September 30, 1926, with no intervening application of funds to trust purposes, the balance in Peckham's account was $5,939.47 of personal funds and $128.51 of trust funds. He had on hand $5,939.47 of personal funds on September 30, 1926, with which to pay this $503.10, to the City National Bank. The minimum balance between those dates was $128.51 on September 2, 1926, which I did deduct from his total funds on deposit, leaving $5,939.47 of personal funds in his account with which to pay this $503.00, so treating that $4,357.00 as trust funds unaccounted for, still there would be sufficient to pay this item. That check was one of the checks issued to pay the Highland Irrigation Company note.

The next item, November 12, 1926, G. W. Peckham paid the City National Bank $3,050.00. The last deposit of trust funds to G. W. Peckham's account prior to November 12, 1926, was on October 14, 1926, and amounted to $10,000.00. On November 12, 1926, the balance of funds on deposit in G. W. Peckham's account was $18,611.85. Deducting from those funds on deposit the deposit of $10,000.00 above mentioned, and the minimum balance of $128.51 of September 2, 1926, total deduction of $10,128.51, there is left in G. W. Peckham's account $8,483.34 of personal funds with which to pay this $3,050.00 to the City National Bank. The $10,000.00 deposit was for the Wheeler and Gray County royalties, which G. W. Peckham transferred to the Wichita Royalty Company, and which at this time had not been repudiated.

1611

The next item, January 19, 1927, G. W. Peckham paid the City National Bank $2,506.12. Trust funds were deposited on January 19, 1927, to the account of G. W. Peckham, amounting to $2,000.00. On January 19, 1927, the balance on deposit before this deposit of $2,000.00, G. W. Peckham's account was $1,581.41. The total funds on deposit on that date was $1,581.41 personal funds and $2,000.00 of trust funds. On that day he paid the City National Bank the sum of $2,506.12, of which $1,581.41 was on personal funds, and $924.71 was from funds transferred from the Wichita Royalty Company. That is the first time that the transferred funds under the minimum balance rule was used to pay any part of his personal indebtedness. That check for $2,000.00 was payable to the City National Bank, being Wichita Royalty Company's check No. 571, dated January 19, 1927, on which there was a voucher notation, for land improvements. $924.71 of this item on this payment, under the minimum balance rule, came from the transferred funds of $2,000.00.

The next payment, March 16, 1927, G. W. Peckham paid the Wichita Royalty Company $1,500.00. The last deposit of trust funds to G. W. Peckham's account prior

to March 16, 1927, was March 8, 1927, amounting
1612 to $500.00. On March 16, 1927, G. W. Peckham had on deposit in his personal account, $2,158.24. If from that amount you deduct the entire $500.00, deposit above mentioned, together with the minimum balance that existed in his account on March 8, 1927, of $5,672.00, that total deduction of $556.72, there remains $1,601.52 of personal funds on deposit in G. W. Peckham's personal account with which to pay $1,500.00 to the City National Bank.

The next payment he made, on April 23, 1927, G. W. Peckham paid $10,963.75 to the City National Bank, the last deposit of trust funds to G. W. Peckham prior to April 23, 1927, was on March 23, 1927, amounting to $2,000.00. April 23, 1927, G. W. Peckham had on deposit in his personal bank account, $13,118.67. Deducting from that amount the minimum balance of April 2, 1927, which existed in his account and amounted to $10.93, there remained $13,107.74 of personal funds on deposit in G. W. Peckham's personal account with which to pay this $10,963.75 to the City National Bank.

The next payment he made, August 23, 1927, $350.00. The last deposit of trust funds to Mr. Peckham's account prior to August 23, 1927, was August 16, 1927, and amounting to $1,500.00. The balance of funds on deposit in his account on August 23, 1927, $298.90 on personal funds and $1,500.00 of transferred funds. On the date he paid to the City National Bank $350.00, $298.90 of which he paid from personal funds, and $51.10 of which
he paid from funds that had been transferred
1613 from the Wichita Royalty Company account. I will explain the $1,500.00 deposit. By voucher notation it shows to have been given to G. W. Peckham to apply on Wichita Royalty Company obligation by the City National Bank, in that case there was a misappropriation of funds by G. W. Peckham to discharge his personal liabilities, and I arrived at this conclusion by the following facts which I set out. I show on June 18, 1927, the balance of trust funds which should have been in his

account was $10.93, being the minimum balance between March 23, 1927, and June 18, 1927, being the minimum balance on April 2, 1927. Then on June 18, 1927, they issued to George Peckham a check for $1,200.00 to apply on their indebtedness at the bank, and this $1,500.00 he applied on their indebtedness at the bank. Then on October 14, they issued $2,400.00 to apply on their indebtedness at the bank. Then on November 25, they issued him a check for $1,800.00 to apply on their indebtedness at the bank. All of those checks, voucher notations and books of the royalty company show, issued to him, to pay notes payable to the City National Bank. The total is $6,900.00. Mr. Peckham did expend money during that time from his personal account and I exhibit to you the check, Plaintiff's Exhibits 103, 116, 117, and 118, for the respective sums of $500.00, $1,336.00, $1,500.00 and $3,485.33, bearing the dates respectively of August 31, 1927, October 19, 1927, November 25, 1927, and 2-15-28, aggregating a total of $6,821.33. Those checks were issued by G. W. Peckham, drawn on his personal account, and
1614 paid and credited upon the obligation of the Wichita Royalty Company. The difference between the aggregate amount of those checks and the amount of the checks that were issued to Peckham or transferred from the Wichita Royalty Company to Peckham's account, for which voucher notations were made to notes payable at the City National Bank, is $78.67. There would be no use of trust funds on this $350.00 payment.

The next payment, October 19, 1927, G. W. Peckham paid to the City National Bank $520.00. The last deposit of trust funds to G. W. Peckham's account prior to October 19, 1927, was on October 15, 1927, and amounted to $2,400.00. On October 19, 1927, the date the payment was made to the bank, there was on deposit in G. W. Peckham's personal account, $2,222.71. The funds transferred from the Wichita Royalty Company. On this date he paid the City National Bank $520.00, on his personal indebtedness, and this $520.00 was paid from transferred funds.

This $2,400.00 was returned for the purpose for which the transferred funds were issued, and applied to Wichita Royalty Company's indebtedness, that check is signed by E. E. Scannell, payable to the City National Bank, and issued by the Wichita Royalty Company, deposited by Mr. Peckham to his individual credit in the bank. The voucher notations from the books of the royalty company show that check was given to apply on notes payable to the City National Bank. Peckham paid a like sum, except to the extent of $78.00 and some odd cents, that is explained in the previous matter.

1615 On October 19, 1927, he actually paid from his personal account $1,336.00, which was credited on the Wichita Royalty Company note payable to the bank.

The next payment was made on February 15, 1928, G. W. Peckham paid the City National Bank $513.33. On February 15, 1928, there was deposited to G. W. Peckham's account trust funds amounting to $6,000.00. That was not a transfer of funds from the royalty company account to Peckham's individual account. That was a cashier's check indorsed by W. C. Duncan and deposited to G. W. Peckham's personal account. It had no indicia of ownership of the royalty company on it at all. It has been offered in evidence as Plaintiff's Exhibit 146. This $6,000.00 item was a deposit represented by cashier's check on the Wichita State Bank, issued by the Wichita State Bank and Trust Company, payable to W. C. Duncan for that amount, it contains indorsement, payable to the order of G. W. Peckham for Bristow Royalty, W. C. Duncan and is signed and indorsed by G. W. Peckham. This amount represents no transfer of funds from the Wicihta Royalty Company in the City National Bank to Peckham's individual account. The reason I put that analysis in is because they alleged it was trust funds deposited of which the bank had notice. Treating it in the way in which they allege it, there is $178.00 of that $6,000.00 paid from this payment of $513.33, applying the minimum balance rule, however, on that same date Peck-

ham individually paid on the Wichita Company note the sum of $3,485.33.

The next payment, July 20, 1928, G. W. Peck-
1616 ham paid to the City National Bank, $493.78.

The last deposit of trust funds to G. W. Peckham's account prior to July 20, 1928, was on April 20, 1928, amounting to $1,850.00. On July 20, 1928, G. W. Peckham had on deposit in his personal account $3,840.57, deducting from that the minimum balance on June 9, 1928, of $8.10, leaves a balance of $382.48, of personal funds on deposit in G. W. Peckham's personal account, with which to pay the $493.78, to the City National Bank. This item of $1,850.00 was a check issued by the Wichita Royalty Company, being check No. 710, and payable to the City National Bank in that sum, and the voucher notation states, "Notes payable to apply on indebtedness at the City National Bank, interest and principal."

The next payment of $3,163.78 was made on September 27, 1928. Trust funds were deposited to G. W. Peckham's account on September 27, 1928, amounting to $224.66. On September 27, 1928, there were personal funds deposited in his account amounting to $5,013.15, in addition to the $424.66. On that date he had $513.15 of personal funds with which to make this payment of $3,163.78 to the City National Bank.

The next payment, there is a group of them, $424.66, the last transfer of funds prior to George Peckham's death, I have grouped the remainder of the payments.

The remaining payments constitute seven items; on December 4, 1928, he paid $614.50; on January 12, 1929, he paid $2,013.33; on May 11, 1929, he paid $373.76;
1617 on June 24, 1929, he paid $20,214.44; on August 24, 1929, he paid $381.09; on September 2, 1929, he paid $5,000.00; on October 25, 1929, he paid $3,061.00, all of which payments were made by G. W. Peckham out of his personal account to the City National Bank, and the last deposit of trust funds to G. W. Peckham's account prior to any and all of these dates on which payments were made, was on September 27, 1928, and amounted to

$424.66, which amount he, G. W. Peckham, on the same day, from his personal account, paid upon the indebtedness of the Wichita Royalty Company to the City National Bank, the sum of $424.66. That amount is not included in the item that goes to make up the $6,800.00. My analysis of the last item is, none of those seven payments, on his personal obligation to the City National Bank were paid from anything but personal funds. There was no further transfer of trust, royalty company's funds, since September 27, 1928.

All of these payments that were made from the very beginning from 1923 up shortly to the time of George Peckham's death, were made upon personal checks of George Peckham drawn on his personal account in the City National Bank. There were no payments made on his personal indebtedness from checks of the royalty company.

Mr. Humphrey:

We offer in evidence the two EXHIBITS 210 and 210A, as follows:

Analysis of Source of Funds Applied by G. W. Peckham to Pay His Personal Indebtedness to City National Bank, January 1, 1923, to November 17, 1925.

1618 The schedules herein submitted present an analysis of the source of the funds used by G. W. Peckham from his individual account with which to pay his personal indebtedness to the City National Bank, beginning January 1, 1923, and ending on July 7, 1925, which is the last date herein recorded on which G. W. Peckham made a payment on his personal indebtedness to the bank.

In making this analysis, I have adopted what is known as the "Minimum Balance Rule," applying only those funds (against the individual account to the trust) which are clearly earmarked and traceable as trust funds, treat-

ing all other funds withdrawn, and not clearly identified as for trust purposes, as funds used for individual purposes, and, when the trust funds have been reduced or dissipated, treating subsequent deposits of personal funds made in due course of business not as a restoration of trust funds.

In other words I have followed the rule in the case of Maryland Casualty Company v. City National Bank, 29 Fed. (2d) 662, to the effect that when trust money has been deposited in the individual account and it must be determined how much of it remains on a given date, the minimum balance existing between that date and the date of the deposit is the amount remaining and identifiable as a trust fund.

Respectfully submitted,

(Signed) P. H. LAMBERT,
C. P. A.

1619 In Explanation.

In this report I have used the designation "Trust Funds" as synonymous with funds transferred from the account of the Wichita Royalty Company to the individual account of G. W. Peckham and being funds classed by the Wichita Royalty Company as funds of that Company transferred and deposited into the individual account of G. W. Peckham. And in this report I have not undertaken to show whether or not these funds were in fact rightfully transferred or were in fact Trust Funds, except in so far as I have traced the same to its application to the trust purposes by payments made from the individual account of G. W. Peckham and for the benefit of the trust.

In this connection there should be an explanation of two items, one being Eleven Thousand Dollars and the other amounting to Ten Thousand Dollars; the former item of Eleven Thousand Dollars appearing on pages 1418, 1419 and 1420 of the first section of this report. These two

items were checks of the Wichita Royalty Company drawn against its account in the City National Bank and were both made payable to the Security National Bank. Neither of these two checks were deposited in the City National Bank to the credit of G. W. Peckham.

There is also a deposit of Six Thousand Dollars to the credit of G. W. Peckham under date of February 15, 1928, and shown on page 1436 of the second section of this analysis. This item was not a transfer of funds from the Wichita Royalty Company account to the individual account of G. W. Peckham, as this deposit represents the deposit of a cashier's check issued by the Wichita State Bank & Trust Company to W. C. Duncan and indorsed by W. C. Duncan to G. W. Peckham and deposited to the credit of G. W. Peckham. The cashier's check representing this item is listed as Plaintiff's Exhibit No. 146.

1620

The above three items, like all of the other items of alleged "trust funds" herein dealt with, were included in this analysis of G. W. Peckham's bank account because they were alleged in Defendant's cross complaint to be trust funds. And because they were alleged to be trust funds they are herein dealt with as if they were, in fact, trust funds; and this was done irrespective of any controverting facts that might exist.

EXHIBIT "A."

1621 Payments Made From G. W. Peckham's Personal Account on His Personal Indebtedness to the City National Bank from January 1, 1923, to November 17, 1925:

Date Paid	Payments—Principal and Interest	Paid From Trust Funds	Paid From Personal Funds	Minimum Balance and Analysis
2- 6-23	$ 594.75		$ 594.75	Page 1
3- 5-23	1,000.00		1,000.00	2
3- 6-23	500.00		500.00	2
3- 8-23	500.00		500.00	2

3- 8-23	500.00		500.00	2
4-23-23	4,094.15		4,094.15	3
5-15-23	1,008.55		1,008.55	4
6-22-23	3,050.60		3,050.60	5
8-10-23	3,985.78		3,985.78	5
11-13-23	1,000.00		1,000.00	5
11-20-23	2,000.00		2,000.00	5
11-22-23	1,000.00		1,000.00	5
11-30-23	1,555.82		1,555.82	5
2- 5-24	67.67		67.67	6
2-21-24	8,022.28*		8,022.28	7
3-17-24	10,000.00		10,000.00	8
3-18-24	10,026.75**		10,026.75	9
5- 1-24	2,048.07		2,048.07	10
6- 7-24	4,027.47		4,027.47	11
6- 7-24	1,000.00		1,000.00	11
6-11-24	234.22		234.22	12
7- 3-24	967.67		967.67	13
8- 2-24	58.77		58.77	14
8- 5-24	117.56		117.56	14
10-30-24	12,500.00		12,500.00	15
11- 3-24	5,100.00		5,100.00	16
11-10-24	200.00		200.00	16
11-29-24	15,069.99		15,069.99	16
12-13-24	12,016.00		12,016.00	16
2- 5-25	10,200.00		10,200.00	17
2-18-25	15,210.00		15,210.00	17
4- 7-25	12,162.66		12,162.66	17
4- 7-25	80.00		80.00	17
5-12-25	4,056.00		4,056.00	18
6- 6-25	220.00		220.00	18
6-11-25	66.67		66.67	18
7- 7-25	12,072.00		12,072.00	19
Totals	$156,313.43		$156,313.43	

*Note—$3,000.00 of this item applied to Griswold Note Number 46922.

**Note—$10,026.75 of this item applied to W. H. Peckham Note Number 47675.

1622 EXHIBIT "B."

Analysis of G. W. Peckham's Indebtedness to City National Bank.

Notes Payable to City National Bank at 1-1-23			$7,094.75
Year 1923—			
Borrowed:			
4-17-23	$1,000.00		
4-25-23	3,000.00		
6-27-23	4,000.00		
10-17-23	5,500.00		
12- 3-23	5,000.00	$18,500.00	
Interest Charges		262.57	$18,762.57
Payments to City National Bank			20,789.65
Net Reduction			2,027.08
Balance at 1-1-24			$5,067.67
Year 1924—			
Borrowed:			
3- 6-24	$10,000.00		
4- 1-24	7,000.00		
5- 7-24	4,000.00		
6- 5-24	1,000.00		
6-11-24	5,000.00		
6-19-24	10,000.00		
10-28-24	12,500.00		

11- 8-24	15,000.00		
12- 6-24	12,000.00		
12-17-24	15,000.00	$91,500.00	
Less—Fain Reduction (7-3-24)		5,000.00	
		$86,500.00	
Interest Charges		2,062.03	$88,562.03
Payments to City National Bank			68,429.70
Net Increase			20,132.33
Balance at 1-1-25			$25,200.00

Year 1925 to November 17th—

Borrowed:			
1- 6-25	$12,000.00		
3-10-25	4,000.00		
4- 6-25	15,000.00		
4- 9-25	6,500.00		
5-22-25	6,000.00		
6-11-25	12,000.00	$55,500.00	
Interest Charges		867.33	$56,367.33
Payments to City National Bank			54,067.33
Net Increase			2,300.00
Balance Due City National Bank at November 17, 1925			$27,500.00

1623 Paid to the City National Bank on February 6, 1923 ..... $594.75

	Personal Funds	Trust Funds
The last deposit of trust funds to the account of G. W. Peckham, prior to February 6, 1923, was on January 16, 1923, amounting to		$1,040.00

Analysis of Funds in G. W. Peckham's account on February 6, 1923.

	Amounts
2-6-23 Total funds on Deposit—Opening Balance	$3,532.35
2-6-23 Deposit of Personal Funds	629.30
Total	$4,161.65
Deduct:	
Maximum posible trust funds on deposit in this account at 2-6-23 (Minimum balance on 2-2-23)	244.53
2-6-23 Personal Funds on Deposit	$3,917.12
2-6-23 Paid to City National Bank (from Personal Funds)	594.75

1624 Paid to the City National Bank:

On March 5, 1923	$1,000.00
On March 6, 1923	500.00
On March 8, 1923	500.00
On March 8, 1923	500.00

	Personal Funds	Trust Funds
The last deposit of trust funds to the account of G. W. Peckham, prior each of the above dates, was on February 21, 1923, amounting to		$1,046.66

Analysis of Funds in G. W .Peckham's Account on March 5th, 6th, and 8th, 1923.

	At 3-5-23	At 3-6-23.	At 3-8-23.
Funds on Deposit	$5,068.62	$3,233.54	$4,619.84
Less—Above deposits of trust funds on 2-21-23	1,046.66	1,046.66	1,046.66
Personal Funds on Deposit	$4,021.96	$2,186.88	$3,573.18
Paid to City National Bank (from Personal Funds)	1,000.00	500.00	1,000.00

1625 Paid to the City National Bank on April 23, 1923 ..... $4,094.15

	Personal Funds	Trust Funds
The last deposit of funds from Wichita Royalty Company to the account of G. W. Peckham prior to April 23, 1923, was on April 10, 1923, and amounted to		$2,516.67
These funds were applied by G. W. Peckham on April 10, 1923, to their contemplated trust purpose as set forth in escrow agreement No. 1663, covering the purchase of Wichita Royalty Company Property No. 71—Principal and interest paid		2,516.67

4-23-23 Balance on Deposit—Peckham's account	$5,046.25
4-23-23 Paid to City National Bank (from Personal Funds)	4,094.15

Note—The minimum balance between April 10th and April 23,,1923, was $316.63 on April 11th.

1626 Paid to the City National Bank on May 15, 1923 ..... $1,008.55

	Personal Funds	Trust Funds
The last deposit of funds from Wichita Royalty Company to the account of G. W. Peckham prior to May 15, 1923, was on May 11, 1923, amounting to		$2,533.33
These funds were applied by G. W. Peckham on May 15, 1923, to their contemplated trust purpose as set forth in escrow agreement No. 1663, covering the purchase of Wichita Royalty Company Property No. 71—Principal and Interest paid		2,533.33
5-15-23 Balance on Deposit—Peckham account	$7,492.63	
5-15-23 Paid to City National Bank (from Personal Funds)	1,008.55	
Note—The maximum possible trust funds on deposit at 5-15-23 would be	2,533.33	
The minimum possible personal funds on deposit at 5-15-23 would be	4,959.30	

1627 Paid to the City National Bank:

On June 22, 1923	$3,050.60
On August 10, 1923	3,985.78
On November 13, 1923	1,000.00
On November 20, 1923	2,000.00
On November 22, 1923	1,000.00
On November 30, 1923	1,555.82

No trust funds were deposited to the account of G. W. Peckham between May 11, 1923, and January 19, 1924, The last deposit of such funds prior to each and all of the above payments was on May 11, 1923, and was fully accounted for on that date.

It is therefore evident that all of the above payments made to the City National Bank were from G. W. Peckham's personal funds, on deposit in his personal bank account.

Note: Minimum balance from May 11, 1923, to June 22, 1923, was on June 16	$253.85
To August 10, 1923, was on June 23	37.99
To November 13, 1923, was on June 23	37.99
To November 20, 1923, was on June 23	37.99
To November 22, 1923, was on June 23	37.99
To November 30, 1923, was on June 23	37.99

1628 Paid to the City National Bank on February 5, 1924 ..... $67.67

	Personal Funds	Trust Funds
The last Deposit of Trust funds to the account of G. W. Peckham, prior to February 2, 1924, was on February 2, 1924, when the Wichita Royalty Company made an advance on the purchase price of their 1/64 interest in the Wilson Royalty. This advance amounted to		$12,000.00
G. W. Peckham acquired this royalty and on April 22, 1924 conveyed same to the Wichita Royalty Company, thereby discharging in full the trust purpose of the above sum of		$12,000.00
Funds on Deposit at February 5, 1924	$2,593.62	

No other Trust funds being present in the account of G. W. Peckham on February 5, 1924, it is evident that the above payment of $67.67 was made, in effect and in fact, from his personal funds.

1629 Paid to the City National Bank on February 21, 1924 ..... $8,022.28

	Personal Funds	Trust Funds
The last deposit of trust funds to the account of G. W. Peckham, prior to February 21, 1924, was on February 11, 1924, amounting to		$2,500.00

Analysis of Funds in G. W. Peckham's account on February 21, 1924.

	Amounts
2-21-24 Total Funds on Deposit	$15,936.79
Deduct: Maximum possible trust funds in this account on 2-21-24 (Minimum Balance on 2-10-24)	1,398.93
2-21-24 Personal Funds on Deposit	$14,537.86
2 21-24 Paid to City National Bank (from Personal Funds)	8,022.28

1630 Paid to the City National Bank on March 17, 1924 ..... $10.000.00

	Personal Funds	Trust Funds
The last deposit of trust funds to the account of G. W. Peckham, prior to March 17, 1924, was on February 9, 1924, amounting to		$2,500.00

Analysis of Funds in G. W. Peckham's Account on March 17, 1924.

		Amounts
3-17-24	Funds on Deposit—Opening Balance	$10,466.33
3-17-24	Deposit of Personal Funds	10,625.00
3-17-24	Total funds on Deposit	$21,091.33
	Deduct: Maximum possible trust funds in this account on 3-17-24 (Minimum Balance on 2-19-24)	1,398.93
	3-17-24 Personal Funds on Deposit	$19,692.40
	3-17-24 Paid to City National Bank (from Personal Funds)	10,000.00
1631	Paid to the City National Bank on March 18, 1924	$10,026.75

	Personal Funds	Trust Funds
On the above date, March 18, 1924, trust funds were deposited to the account of G. W. Peckham in the sum of		$9,250.00*

(This was the first such deposit since 2-9-24.)

Analysis of Funds in G. W. Peckham's Account on March 18, 1924.

		Amount
3-18-24	Funds on Deposit—Opening Balance	$11,033.48
Add:—Deposits:		
3-18-24	Deposit of Personal Funds	$78,750.00
3-18-24	Deposit of Trust Funds	9,250.00
	Total Funds	$99,033.48

Deduct: Deposit of Trust Funds (Above)	9,250.00
3-18-24 Personal Funds on Deposit	$89,783.48
3-18-24 Paid to City National Bank (from Personal Funds)	10,026.75

*Note.—Attention is called to the further fact that this item of $9,250.00 represents the balance of the purchase price of the 1/64 royalty interest in the Wilson Royalty bought by the Wichita Royalty Company, G. W. Peckham acquired this royalty company.

1632 Paid to the City National Bank on May 1, 1924 ..... $2,048.07

	Personal Funds	Trust Funds
The last Deposit of Trust funds to the account of G. W. Peckham, prior to May 1, 1924, was on March 18, 1924, amounting to		$9,250.00

Analysis of Funds in G. W. Peckham's Account on May 1, 1924.

	Amount
5-1-24 Total Funds on Deposit	$4,874.60
Deduct: Maximum possible trust funds on deposit on May 1, 1924 (Minimum balance on 3-27-24)	457.19
5-1-24 Personal Funds on Deposit	$4,417.41
5-1-24 Paid to City National Bank (from Personal Funds)	2,048.07

1633 Paid to the City National Bank:

On June 7, 1924	$4,027.47
On June 7, 1924	1,000.00

	Personal Funds	Trust Funds
The last deposit of trust funds to the account of G. W. Peckham, prior to June 7, 1924, was on March 18, 1924, amounting to		$9,250.00

Analysis of Funds in G. W. Peckham's Account on June 7, 1924.

	Amounts
6-7-24—Funds on Deposit—Opening Balance	$1,256.39
6-7-24 Add—Deposit of Personal Funds	5,000.00
Total	$6,256.39
Deduct: Maximum possible trust funds on deposit in this account on 6-7-24 (Minimum balance on 3-27-24)	457.19
6-7-24 Personal Funds on Deposit	$5,799.20
6-7-24 Paid to City National Bank (from Personal Funds)	5,027.47
1634 Paid to the City National Bank on June 11, 1924	$234.22

	Personal Funds	Trust Funds
The last deposit of trust funds to the account of G. W. Peckham, prior to June 11, 1924, was on March 18, 1924, amounting to		$9,250.00

Analysis of Funds in G. W. Peckham's Account on June 11, 1924.

	Amounts
6-11-24 Total Funds on Deposit	$1,136.72
Deduct: Maximum possible trust funds on deposit in this account on 6-11-24 (Minimum balance on 3-27-24)	457.19
6-11-24 Personal Funds on Deposit	$679.53
6-11-24 Paid to City National Bank (from Personal Funds)	234.22
1635 Paid to the City National Bank on July 3, 1924	$967.67

	Personal Funds	Trust Funds
On the above date, July 3, 1924, trust funds were deposited in the account of G. W. Peckham, and amounting to		$11,000.00**

Analysis of Funds in G. W. Peckham's Account on July 3, 1924.

	Amount	
7-3-24 Funds on Deposit—Opening Balance		$7,469.08
7-3-24 Add—Deposit of Trust Funds	$11,000.00	
7-3-24—Deposit of personal Funds ..	321.82	11,321.82
Total		$18,790.90
Deduct—Trust Funds on Deposit (Above)		11,000.00
7-3-24 Personal Funds on Deposit ...		7,790.90
7-3-24 Paid to City National Bank (From Personal Funds)		967.67

**Note: For an explanation of this $11,000.00 item which appears on this page and the next three pages,

please be referred to the explanation set out on the page immediately following the transmittal letter accompanying this report.

1636 Paid to the City National Bank:

On August 2, 1924	$58.77
On August 5, 1924	117.56

	Personal Funds	Trust Funds
The last deposit of trust funds to the account of G. W. Peckham, prior to August 2 or August 5, 1924, was on July 3, 1924, amounting to		$11,000.00

Analysis of Funds in G. W. Peckham's Account on August 2nd and 5th, 1924.

	Amounts 8-2-1924.	8-5-1924.
Total Funds on Deposit	$14,380.31	$16,452.34
Deduct: Maximum possible trust funds on deposit in this account on either of these dates (Minimum balance on 7-23-24)	9,241.65	9,241.65
Personal Funds on Deposit	$5,138.66	$7,210.69
Paid to City National Bank (from Personal Funds)	58.77	117.56

Note: See the footnote on page 1418.

1637 Paid to the City National Bank on October 30, 1924 ..... $12,500.00

	Personal Funds	Trust Funds
The last deposit of trust funds to the account of G. W. Peckham, prior to October 30, 1924, was on July 3, 1924, amounting to		$11,000.00

Analysis of Funds in G. W. Peckham's Account on October 30, 1924.

	Amount
10-30-24 Funds on Deposit—Opening Balance	$1,284.29
10-30-24 Add—Deposit of Personal Funds ...	12,563.74
Total	$13,848.03
Deduct: Maximum possible trust funds on deposit in this account on 10-30-24 (Minimum balance on 10-27-24)	667.68
10-30-24—Personal Funds on Deposit	$13,180.35
10-30-24 Paid to City National Bank (from Personal Funds)	12,500.00

Note: See the footnote on page 1418.

1638 Paid to the City National Bank:

On November 3, 1924	$5,100.00
On November 10, 1924	200.00
On November 29, 1924	15,069.99
On December 13, 1924	12,016.00

	Personal Funds	Trust Funds
The last deposit of trust funds to the account of G. W. Peckham, prior to each of the above dates, was on July 3, 1924, amounting to ...		$11,000.00

Analysis of Funds in G. W. Peckham's Account on each of the Above Dates.

	At 11-3-24.	At 11-10-24.	At 11-29-24.	At 12-13-24.
Funds on Deposit	$6,138.95	$14,816.00	$18,383.27	$16,594.02
Deduct: Maximum possible trust funds on deposit, being the minimum balance on deposit at:				
10-28-24 ...	626.18			
10- 7-24 ...		2.00	2.00	2.00
Personal funds on deposit	$5,512.77	$14,814.00	$18,381.27	$16,592.02
Paid to City National Bank (from Personal Funds)	5,*1000*.00	200.00	15,069.99	12,016.00

Note: See the footnote on page 1418.

1639 Paid to the City National Bank:

On February 5, 1925		$10,200.00
On February 18, 1925		15,210.00
On April 7, 1925	$12,162.66	
On April 7, 1925	80.00	12,242.66

	Trust Funds
The last deposit of trust funds to the account of G. W. Peckham, prior to each of the above dates, was on December 23, 1924, amounting to	$695.00

Analysis of Funds in G. W. Peckham's Account on each of the Above Dates.

	At 2-5-25.	At 2-18-25.	At 4-7-25.
Funds on Deposit	$14,400.22	$20,812.14	$39,029.79
Less: The maximum possible trust funds on deposit in this account (above item 12-23-24)	695.00	695.00	695.00
Personal Funds on Deposit	$13,705.22	$20,126.14	$38,334.79
Paid to City National Bank (from Personal Funds)	10,200.00	15,210.00	12,242.66

1640 Paid to the City National Bank:

On May 12, 1925	$4,056.00
On June 6, 1925	220.00
On June 11, 1925	66.67

	Personal Funds	Trust Funds
The last deposit of trust funds to the account of G. W. Peckham, prior to May 12, or June 6, or June 11, 1925, was on May 5, 1925 amounting to		$2,500.00
5-6-25—G. W. Peckham acquired for the Wichita Royalty Company their property No. 79, being the property for which the above funds were designated to purchase. For this property and in pursuance of the trust purpose, G. W. Peckham paid Ray and Massie the sum of		2,500.00

5-12-25 Funds on Deposit	$5,451.37	
5-12-25 Paid to City National Bank (from Personal Funds)	4,056.00	
6-6-25 Funds on Deposit	1,919.04	
6-6-25 Paid to City National Bank (from Personal Funds)	220.00	
6-11-25 Funds on Deposit	602.54	
6-11-25 Paid to City National Bank (from Personal Funds)	66.67	

1641 Paid to the City National Bank on July 7, 1925 ..... $12,072.00

	Personal Funds	Trust Funds
The last deposit of funds from Wichita Royalty Company into the account of G. W. Peckham, prior to July 7, 1925, was made on June 29, 1925, and was for the purchase of Company's property No. 80. The payment to Peckham, and part of the purchase price of this property, amounted to		$5,000.00
On July 1st and 20th, 1925, G. W. Peckham conveyed to the Wichita Royalty Company the properties for which the above funds were intended to acquire, thereby applying said funds to their contemplated purpose		5,000.00
7-7-25 Funds on Deposit	$20,198.42	
7-7-25 Paid to City National Bank (from Personal Funds)	12,072.00	

1642 PLAINTIFF'S EXHIBIT 210a.

Analysis of Source of Funds applied by G. W. Peckham to Pay his Personal Indebtedness to City National Bank.

November 17, 1925 to October 25, 1929.

1643 The schedules herein submitted present an analysis of the source of the funds used by G. W. Peckham from his individual account with which to pay his personal indebtedness to the City National Bank, beginning November 17, 1925, and ending on October 25, 1929, which was the last date on which G. W. Peckham made a payment on his personal indebtedness to the bank.

In making this analysis, I have adopted what is known as the "Minimum Balance Rule," applying only those funds (against the individual account to the trust) which are clearly earmarked and traceable as trust funds, treating all other funds withdrawn and not clearly identified as for trust purposes, as funds used for individual purposes, and, when the trust funds have been reduced or dissipated, treating subsequent deposits of personal funds made in due course of business not as restoration of trust funds.

In other words, I have followed the rule in the case of Maryland Casualty Company v. City National Bank, 29 Fed. (2d) 662, to the effect that when trust money has been deposited in the individual account and it must be determined how much of it remains on a given date, the minimum balance existing between that date and the date of the deposit is the amount remaining and identifiable as a trust fund.

Respectfully submitted,

(Signed) P. H. LAMBERT, C. P. A.

1644 In Explanation.

In this report I have used the designation "Trust Funds" as synonomous with funds transferred from the account of the Wichita Royalty Company to the individual account of G. W. Peckham and being funds classed by the Wichita Royalty Company as funds of that Company transferred and deposited into the individual account of G. W. Peckham. And in this report I have not undertaken to show whether or not these funds were in fact rightfully transferred or were in fact Trust Funds, except in so far as I have traced the same to its application to the trust purposes by payments made from the individual account of G. W. Peckham and for the benefit of the trust.

In this connection there should be an explanation of two items, one being Eleven Thousand Dollars and the other amounting to Ten Thousand Dollars; the former item of Eleven Thousand Dollars appearing on pages 1418, 1419 and 1420 of the first section of this report. These two items were checks of the Wichita Royalty Company drawn against its account in the City National Bank and were both made payable to the Security National Bank. Neither of these two checks was deposited in the City National Bank to the credit of G. W. Peckham.

There is also a deposit of Six Thousand Dollars to the credit of G. W. Peckham under date of February 15, 1928, and shown on page 1436 of the second section of this analysis. This item was not a transfer of funds from the Wichita Royalty Company account to the
1645 individual account of G. W. Peckham, as this deposit represents the deposit of a cashier's check issued by the Wichita State Bank & Trust Company to W. C. Duncan and indorsed by W. C. Duncan to G. W. Peckham and deposited to the credit of G. W. Peckham. The cashier's check representing this item is listed as Plaintiff's Exhibit No. 146.

The above three items, like all of the other items of alleged "Trust Funds" herein dealt with, were included

in this analysis of G. W. Peckham's bank account because they were alleged in defendant's cross complaint to be trust funds. And because they were alleged to be trust funds they are herein dealt with as if they were, in fact, trust funds; and this was done irrespective of any controverting facts that might exist.

1646 EXHIBIT "A."

Payments Made From G. W. Peckham's Personal Account on His Personal Indebtedness to the City National Bank From November 17, 1926, to October 25, 1929.

Date Paid	Payments—Principal and Interest	Paid From Trust Funds	Paid From Personal Funds	Minimum Balance and Analysis
11-17-25	$1,007.23		$1,007.23	Page 1
2-13-26	550.00		550.00	2
5-15-26	550.00		550.00	3
8-10-26	550.00		550.00	4
9-30-26	503.10		503.10	5
11-12-26	3,050.00		3,050.00	6
1-19-27	2,506.12	$924.71	1,581.41	7
3-16-27	1,500.00		1,500.00	8
4-23-27	10,963.75		10,963.75	9
8-23-27	350.00		350.00	10
10-19-27	520.00		520.00	11
2-15-28	513.33	178.00	335.33	12
7-20-28	493.78		493.78	13
9-27-28	3,163.78		3,163.78	14
12-14-28	614.50		614.50	15
1-12-28	2,013.33		2,013.33	15
5-11-29	373.76		373.76	15
6-24-29	20,214.44		20,214.44	15
8-24-29	381.09		381.09	15
9- 2-29	5,000.00		5,000.00	15
10-25-29	3,061.00		3,061.00	15
Totals	$57,879.21	$1,102.71	$56,776.50	

1647

EXHIBIT "B."

Analysis of G. W. Peckham's Indebtedness to City National Bank.

Notes Payable to City National Bank at 11-17-25			$27,500.00
Interest to 1-1-26		$1,557.23	
Less: 11-17-25 Payment		1,007.23	550.00
Balance at 1-1-26			$28,050.00
Year 1926—			
Payments to City National Bank		$5,203.10	
Less:			
Borrowed on 9-2-26	$ 500.00		
Interest Charged	2,153.10	2,653.10	
Net Reduction			2,550.00
Balance at 1-1-27			$25,500.00
Year 1927—			
Payments to City National Bank		$15,839.87	
Less:			
Borrowed: 1- 8-27	$2,500.00		
1-24-27	3,000.00		
4-29-27	1,000.00		
7-21-27	1,000.00		
	$7,500.00		
Interest Charges	1,309.87	8,809.87	
Net Reduction			7,030.00
Balance at 1-1-28			$18,470.00

Year 1928—			
Payments to City National Bank		$4,785.39	
Less: Borrowed on 11-1-28	$3,100.00		
Deduct—Paid on 11-19-28	2,500.00		
	600.00		
Interest Charges	1,628.72	2,228.72	
Net Reduction			2,556.67
Balance at 1-1-29			$15,913.33
Year 1929 to October 25th—			
Borrowed:			
4-23	$10,000.00		
5- 4	5,000.00		
5-23	5,000.00		
6- 8	5,000.00		
7- 6	2,500.00		
7-10	7,500.00		
7-23	500.00		
8-30	2,000.00		
9-12	1,000.00	$38,500.00	
Interest Charges	1,604.71	$40,104.71	
Less—Payments to City National Bank		31,043.62	
Net Increase			9,061.09
Balance Due City National Bank at 10-25-29			$24,974.42

1648 Paid to the City National Bank on November 17, 1925 ..... $1,007.23

	Personal Funds	Trust Funds
The last deposit of Trust funds prior to November 17, 1925, was made on October 8, 1925, amounting to		$5,500.00
10-8-25 Balance of Personal funds on Deposit	$237.48	

Disbursements From Trust Funds.

10-19-25—To Purchase Property No. 81—(Draft) ...	$2,252.25	
10-23-25—To Purchase Property—Revenue Stamps.	2.50	
10-26-25—To Purchase Property—Commission Paid.	225.00	
11-3-25—To Purchase Property—Legal Expense ...	25.00	
11-13-25—To Purchase Property No. 82 Check	1,500.00	
11-10-25—Funds Returned to Wichita Royalty Co.....	1,500.00	
Total Trust Funds Applied to Trust Purposes		5,504.75
11-17-25—Balance on Deposit Peckham's Account	$3,216.76	None
11-17-25—Payment to City National Bank (From Personal Funds)	1,007.23	—o—

Note:—The minimum balance between October 8, 1925, and November 17, 1925, was $604.40 on November 2, 1925.

1649 Paid to the City National Bank on February 13, 1926 ..... $550.00

	Personal Funds	Trust Funds
The last Deposit of Trust Funds to G. W. Peckham's account, prior to February 13, 1926, was on January 18, 1926, amounting to.....		$15,769.07

Analysis of Funds in G. W. Peckham's Account on February 13, 1926.

2-13-26—Balance on Deposit.	$22,750.27	
Deduct:		
Balance on Deposit at 1-18-26....	$2,996.80	
Deposit (above) on 1-18-26...	15,769.07	18,765.87
2-13-26—Minimum Personal Funds on Deposit	3,984.40	
2-13-26—Payment to City National Bank (From Personal Funds)	550.00	

Note: The minimum balance between January 18, 1926, and February 13, 1926, was $1,801.71 on February 3rd.

1650 Paid to the City National Bank on May 15, 1926 ..... $550.00

	Personal Funds	Trust Funds
The last Deposit of Trust Funds to G. W. Peckham's account, prior to May 15, 1926, was on March 31, 1926, amounting to		$7,500.00

On April 15, 1926, Paid from his personal account to the Marlborough Addition, as contemplated in the above deposit, the sum of		7,500.00
5-15-26—Balance on Deposit—Peckham's account	$916.57	
5-15-26—Payment to City National Bank (From Personal Funds)	550.00	

Note: The minimum Balance between March 31, 1926, and May 15, 1926, was $187.48 on May 5th.

1651 Paid to the City National Bank on August 10, 1926		$550.00
	Personal Funds	Trust Funds
The last Deposit of Trust Funds to G. W. Peckham's account, prior to August 10, 1926, was August 2, 1926, amounting to		$4,000.00
On August 10, 1926, with no intervening application of Trust Funds to Trust Purposes the balance Peckham's Account was	—o—	3,628.93
8-10-26—Paid to City National Bank (from Trust Funds that were subsequently returned to their intended purpose on 10-15-26)...		550.00

Note: This $4,000.00 deposit of Trust Funds was fully accounted for on October 15, 1926, when Peckham applied same to the contemplated Trust purpose.

1652 Paid to City National Bank on September 30, 1926 ..... $503.10

	Personal Funds	Trust Funds
The last Deposit of Trust Funds to G. W. Peckham's account, prior to September 30, 1926, was on August 27, 1926, amounting to..		$4,357.58
On September 30, 1926, with No intervening application of Trust Funds to Trust Purposes the balance in Peckham's account was..	$5,939.47	128.51
9-30-26—Paid to City National Bank (From Personal Funds)	501.10	

Note: The minimum balance of Peckham's account between August 27, 1926, and September 30, 1936, was $128.51 on September 2nd.

The above $4,357.58 deposit of Trust Funds was fully accounted for on October 15, 1926, when Peckham applied same to their contemplated Trust purpose.

1653 Paid to the City National Bank on November 12, 1926 ..... $3,050.00

	Personal Funds	Trust Funds
The last Deposit of Trust Funds to G. W. Peckham's account, prior to November 12, 1926, was on October 14, 1926, amounting to		$10,000.00

Analysis of Funds in G. W. Peckham's Account on November 12, 1926.

	Amounts
11-12-26—Balance on Deposit—Total Funds	$18,611.85

Deduct:		
Deposit of Trust Funds 10-14-26 (above)	$10,000.00	
Trust Funds on Hand on this account at 10-14-26 (Maximum amount being the 9-2-26 minimum balance)	128.51	10,128.51
Balance—All Personal Funds		$8,483.34
11-12-26—Paid to City National Bank (From Personal Funds)		3,050.00

Note: The above $10,000.00 deposit of Trust Funds was fully accounted for in October and November, 1926, when Peckham applied same to the contemplated Trust purpose.

1654 Paid to the City National Bank on January 10, 1927		$2,506.12
	Personal Funds	Trust Funds
Trust Funds were deposited on January 19, 1927, to the account of G. W. Peckham, amounting to		$2,000.00
1-19-27—Balance on Deposit before above deposit of Trust Funds	$1,581.41	
1-19-27—Total Funds on Deposit	$1,581.41	$2,000.00
1-19-27—Paid to City National Bank the sum of $2,506.12 as follows	$1,581.41	924.71*
1655 Paid to the City National Bank on March 16, 1927		$1,500.00
	Personal Funds	Trust Funds
The last Deposit of Trust Funds to G. W. Peckham's account, prior to March 16, 1927, was on March 8, 1927, amounting to		$500.00

Analysis of Funds in G. W. Peckham's Account on March 16, 1927.

		Amounts
3-16-27—Total Funds on Deposit....		$2,158.24
Deduct:		
Above Deposit on 3-8-27.....	$500.00	
Maximum possible Trust Funds in this account on 3-8-27 (minimum balance on 3-8-27).....	56.72	556.72
3-16-27—Personal Funds on Deposit		$1,601.52
3-16-27—Paid to City National Bank (From Personal Funds)		1,500.00

1656 Paid to City National Bank on April 23, 1927 ..... $10,963.75

	Personal Funds	Trust Funds
The last deposit of Trust Funds to G. W. Peckham's account prior to April 23, 1927, was on March 23, 1927, amounting to		$2,000.00

Analysis of Funds in G. W. Peckham's Account on April 23, 1927.

	Amounts
4-23-27—Total Funds on Deposit	$13,118.67
Deduct:	
Maximum possible Trust Funds in this account on 4-23-27 (Minimum balance on 4-2-27)	10.93
4-23-27—Personal Funds on Deposit..	$13,107.74
4-23-27—Paid to City National Bank (From Personal Funds)	10,963.75

1657 Paid to City National Bank on August 23, 1927 ..... $350.00

	Personal Funds	Trust Funds
The last deposit of Trust Funds to G. W. Peckham's account prior to August 23, 1927, was on August 16, 1927, amounting to		$1,500.00
8-23-27—Balance of Funds on Deposit	$298.90	$1,500.00
8-23-27—Paid to City National Bank from mingled funds $350.00 as follows	298.90	51.10*

Note:—The above $1,500.00 deposit is alleged to have been given to Peckham to apply on Wichita Royalty Company's obligation of at City National Bank. In such case there was no misappropriation of trust funds by G. W. Peckham to discharge his personal liability. This conclusion is substantiated by the following facts:

6-18-27—Trust Funds in Peckham's account (Being the minimum balance between 3-23-27, the date of the last previous deposit of trust funds, and 6-18-27, Minimum balance on 4-2-27).....	10.93
6-18-27—Deposit of Trust Funds (To pay Bank Note)	$1,200.00
8-16-27—Next Deposit of Trust Funds (Do)..	1,500.00
10-14-27—Next Deposit of Trust Funds (Do)...	2,400.00
11-25-27—Next Deposit of Trust Funds (Do)...	1,800.00
(There was no further deposit of trust funds to G. W. Peckham's account to apply on said Royalty Company's Note at City National Bank until on April 20, 1928).	
Total Funds Give Peckham with the specific trust purpose of paying on City National Notes	$6,900.00

Applied by Peckham as follows:

8-31-27—Paid City National Bank on Royalty Co. obligations		$ 500.00
10-19-27—	Do	1,336.00
11-25-27—	Do	1,500.00
2-15-28—	Do	3,485.33
Total Application		$6,821.33

On 2-15-28 G. W. Peckham had on Deposit Unexpended Trust Funds $78.67

1658 Paid to City National Bank on October 19, 1927 ..... $520.00

	Personal Funds	Trust Funds
The last deposit of Trust Funds to G. W. Peckham's account prior to October 19, 1927, was on October 15, 1927, amounting to		$2,400.00
10-19-27—Balance of Funds on Deposit	—o—	$2,222.71
10-17-27—Paid to City National Bank (From Trust Funds)		520.00*

*Note—This item was not appropriated to G. W. Peckham's personal use—for details see notation and explanation on Page 1435.

1659 Paid to the City National Bank on February 15, 1928 ..... $513.33

	Personal Funds	Trust Funds
On February 15, 1928, there was deposited to G. W. Peckham's account, Trust Funds amounting to		$6,000.00
Less: Commissions Paid White and Duncan	$300.00	300.00
	$300.00	$5,700.00

At the time of the above deposit there was a balance in Peckham's account of	35.33	
2-15-28—Funds on Deposit	$335.33	$5,700.00
2-15-28—Paid to City National Bank (From mixed Funds).....	335.33	178.00

Note: For explanation of this $6,000.00 item please be referred to the explanation set out on the page immediately following the transmittal letter accompanying this report.

1660 Paid to City National Bank on July 20, 1928 ..... $493.78

	Personal Funds	Trust Funds
The last deposit of Trust Funds to G. W. Peckham's account prior to July 20, 1928, was on April 20, 1928, amounting to		$1,850.00

Analysis of Funds in G. W. Peckham's Account on July 20, 1928.

	Amounts
7-20-28—Total Funds on Deposit	$3,840.57
Deduct: Maximum possible Trust Funds in this account on 7-20-28 (Minimum balance on 6-9-28)....	8.10
7-20-28—Personal Funds on Deposit	$3,832.47
7-20-28—Paid to City National Bank (From Personal Funds)	493.78

1661 Paid to the City National Bank on September 27, 1928 ..... $3,163.78

	Personal Funds	Trust Funds
Trust Funds were deposited to G. W. Peckham's account on September 27, 1928, amounting to		$424.66

9-27-28—Personal Funds on Deposit at time of above deposit....	$5,013.15		
9-27-28—Total Funds on Deposit.....	$5,013.15	$424.66	
9-27-28—Paid to City National Bank (From Personal Funds)....	3,163.78	-o-	

1662 Paid to the City National Bank:

On December 4, 1928.....$	614.50
On January 12, 1929	2,013.33
On May 11, 1929	373.76
On June 24, 1929	20,214.44
On August 24, 1929.....	381.09
On September 2, 1929....	5,000.00
On October 25, 1929	3,061.00

The last deposit of Trust Funds to G. W. Peckham's account, prior to any and all of the above dates, was on September 27, 1928, amounting to $424.66

On the same date, G. W. Peckham, from his personal account, paid the above funds to the City National Bank for the account of the Wichita Royalty Company 424.66

It is therefore apparent that each of the above payments were made from G. W. Peckham's personal funds and from an account in which no trace of Trust Funds remained.

1663 Calling attention to Plaintiff's Exhibit 210, on page 1421, I show a minimum balance of $2.00 existing on 10-7-24, and then an analysis of the payment on page 1422 where I treated the total funds as trust funds, $695.00, I do not bring the minimum balance of $2.00 forward in that item—in other words, I did not accumulate the minimum balance of the so-called trust funds in schedules 210 and 210a. I have made a schedule wherein

I have accumulated the minimum balance to those trust funds, applying the minimum balance rule as defined in Maryland Casualty Company, 29 F (2) Exhibits 210 and 210a, they represent the rule as laid down in that case. I have a schedule wherein I accumulate the minimum balance with subsequent deposits of so-called trust funds.

Plaintiff's Exhibit 211 represents an assembled statement in tabular form, of the analysis of source of moneys used by G. W. Peckham to pay his personal debts to the City National Bank, and in making the analysis of Mr. Peckham's account, the minimum balance referred to was in this instance, as well as in the preparation of Plaintiff's Exhibits 210 and 210a, except that in this Exhibit 211 the accumulated trust funds were brought forward from transaction to transaction. In other words, this running statement of the trust funds in Mr. Peckham's account, during the period of his administration from 1923 until his death in 1929, accumulating trust funds under the minimum balance rule. Taking page 1638 of Plaintiff's Exhibit 210, where I show a minimum balance of $2.00, in Plaintiff's Exhibit 211, I have carried
that $2.00 and added it to the subsequent deposit
1664 of $695.00 which would make a minimum balance of $697.00, trust funds. I have followed that same plan throughout in making my assembled statement, known as Plaintiff's Exhibit 211; the explanation attached to the exhibit shows what it is; Plaintiff's Exhibit 211 should be used in connection with Plaintiff's Exhibits 210 and 210a. It shows the aggregate amount of so-called trust funds that were actually used applying the minimum balance rule to the payment of Peckham's personal indebtedness. as well as Plaintiff's Exhibits 210 and 210a shows the same thing about the accumulation of it. The difference between the two schedules is that in 211, wherein we accumulate the trust funds on deposit in Mr. Peckham's account, is that in the latter schedule, it is shown that he had $704.40 more of trust moneys applied, that much more trust money to his personal obli-

gation than he did in the schedules wherein we did not accumulate. The schedules of the same date. Exhibits 210, 210a and 211 are correct analysis made by me from the books and records of the Wichita Royalty Company, the City National Bank, George Peckham and such other books and records as I have examined.

Mr. Humphrey:

We offer in evidence Plaintiff's Exhibit 211, in connection with Plaintiff's Exhibits 210 and 210a, PLAINTIFF'S EXHIBIT 211 as follows:

Assembled Statement in Tabular Form of Analysis of Source of the monies used by G. W. Peckham to pay his personal debt to the City National Bank. Page 1 Statement from January 1, 1923, to November 17,
1665 1925. Page 1443 Statement from November 17, 1925, to October 25. 1929.

There is presented in the two attached schedules, analytical statement, in tabular form, of the monies used by G. W. Peckham to pay his personal indebtedness to the City National Bank.

These two schedules are necessary part of a somewhat similar analysis made in Plaintiff's Exhibits No. 210 and 210a, and are here presented for consideration in connection with same. In the two Exhibits referred to, each payment made by Peckham to the Bank upon his personal indebtedness was, therein, treated as an isolated transaction in order to facilitate the presentation, in readable form, of all the elements and circumstances attending each of such payments to the bank. And in so doing, it was not feasible, in many instances to give effect to the accumulated and highly fluctuating balance of trust funds which were on deposit in Peckham's personal bank account.

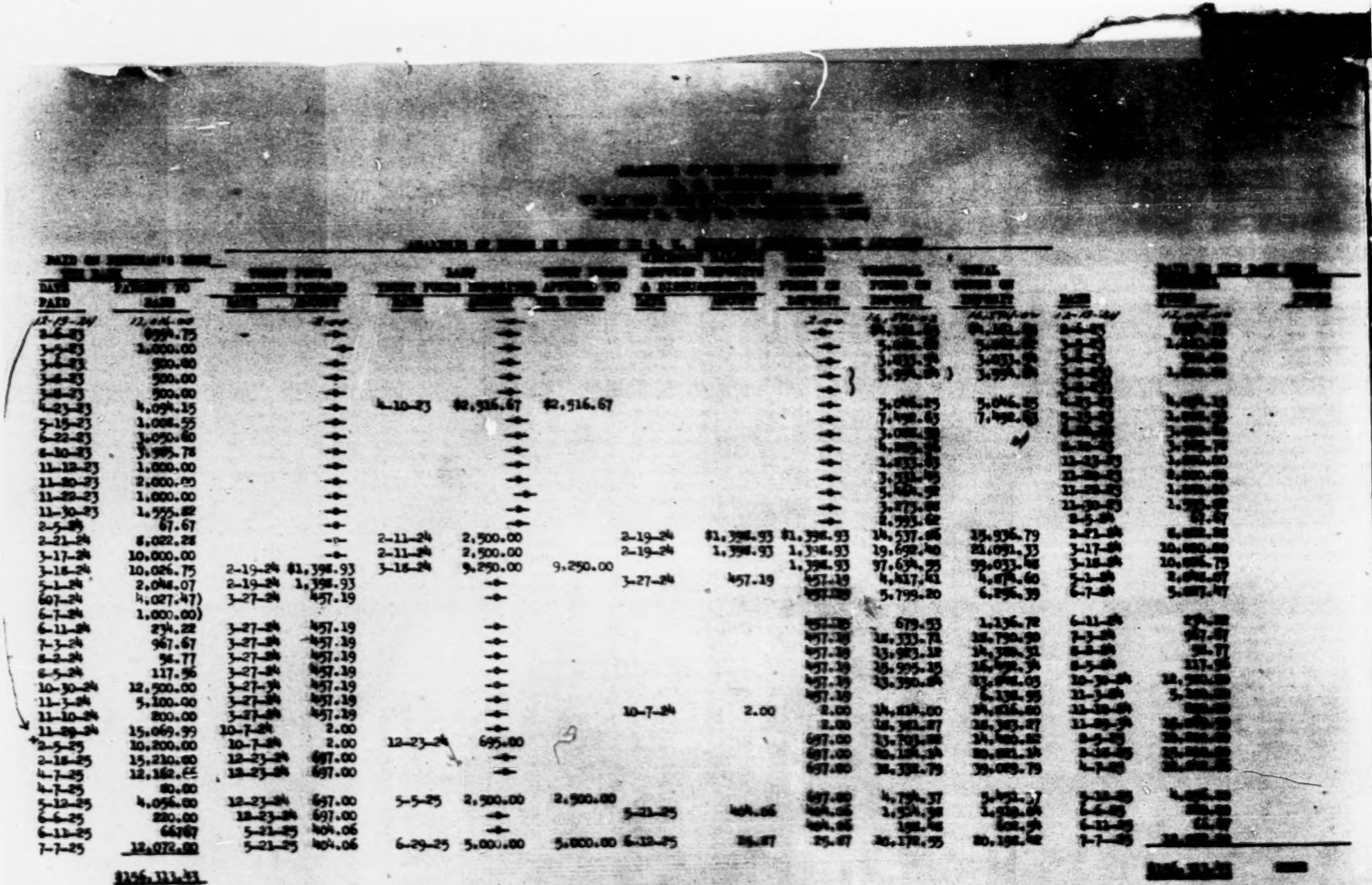
On the other hand, the two schedules herewith submitted, show all payments, by dates and amounts, made by Peckham to the Bank; what part, if any, of such payments were made from trust monies; and, in addition, gives effect to a running statement of the trust monies on deposit in Peckham's commingled bank account. Also, in these schedules, there is eliminated those alleged transfers of funds to Peckham's account which were not, in fact, transfers at all.

While the attached schedules are devoid of the explantory data set forth in Plaintiff's Exhibits No. 210 and 210A, yet they present a more thoroughgoing portrayal of what transpired (with reference to whether or not Peckham used trust money to pay his personal indebtedness to the bank), because they represent a com-
1666 posite picture of the entire series of transactions which may be viewed in the whole and without the confusion which must attend the effort to assimilate a clear and comprehensive picture from a large number of disjointed transactions and facts.

The terms "Trust Funds" and "Minimum Balance," used herein, are subject to the same explanations as are set forth in Plaintiff's Exhibits No. 210 and 210a.

Respectfully submitted,

(Signed) P. H. LAMBERT,
Certified Public Accoutnant.



Page 1

P. H. LAMBERT & COMPANY
CERTIFIED PUBLIC ACCOUNTANTS
WICHITA FALLS, TEXAS

Analysis of the Funds Used by G. W. Peckham to Pay His Debt to City National Bank, November 17, 1925, to October 25, 1929.

Paid on Peckham's Debt to the Bank		Trust Funds Brought Forward		Last Trust Funds Deposit		Trust Funds Applied	Miminum Balance Between Deposit and Disbursements		Total Trust Funds	Personal Funds on	Total Funds		Paid to Bank From	
Date Paid	Payment to Bank	Date	Amount	Date	Amount	to the Trust	Date	Amount	on Deposit	Deposit	on Deposit	Date	Personal Funds	Trust Funds
11-17-25	$1,007.23	6-12-25	$25.87	10- 8-25	$ 5,500.00	$ 5,500.00			$ 25.87	$ 3,190.89	$ 3,216.76	11-17-25	$ 1,007.23	
2-13-26	550.00	6-12-25	25.87	1-18-26	15,769.07	15,769.07	(2- 6-26	$3,488.76)	25.87	22,724.40	22,750.27	2-13-26	550.00	
5-15-26	550.00	6-12-25	25.87	3-31-26	7,500.00	7,500.00	(5- 5-26	187.48)	25.87	890.70	916.57	5-15-26	550.00	
8-10-26	550.00	6-12-25	25.87	8- 2-26	4,000.00	4,000.00	6- 5-26	10.18	10.18	3,618.75	3,628.93	8-10-26	550.00	
9-30-26	503.10	6- 5-26	10.18	8-27-26	4,357.58	4,357.58	(9- 2-26	128.51)	10.18	5,929.29	5,939.47	9-30-26	503.10	
11-12-26	3,050.00	6- 5-26	10.18	10-14-26	10,000.00	10,000.00	(10-19-26	1,871.40)	10.18	19,601.67	18,611.85	11-12-26	3,050.00	
1-19-27	2,506.12	1- 4-27	402.40	1-19-27	2,000.00				2,402.40	1,219.01	3,621.41	1-19-27	1,210.01	$1,287.11
3-16-27	1,500.00	1-19-27	2,402.40	(Three)	3,301.82	500.00	3- 8-27	56.72	358.05	1,800.20	2,158.24	3-16-27	1,500.00	
4-23-27	10,963.75	3-16-27	358.04	3-23-27	2,000.00		4- 2-27	10.93	10.93	13,107.74	13,118.67	4-23-27	10,963.75	
8-23-27	350.00	6-28-27	2.33	8-16-27	1,500.00	(1,500.00)	8-20-27	798.90	798.90	1,000.00	1,798.90	8-23-27	350.00	
10-19-27	520.00	10-14-27	39.91	10-15-27	2,400.00	(2,400.00)			2,414.91	—o—	2,414.91	10-19-27	—o—	520.00 X*
2-15-28	513.33	10-15-27	2,414.91		—o—		11- 1-27	7.31	7.31	6,028.02	6,035.33	2-15-28	513.33	
7-20-28	493.78	2-15-28	7.31	4-20-28	1,850.00	(1,850.00)	6- 9-28	8.10	8.10	3,832.47	3,840.57	7-20-28	493.78	
9-27-28	3,163.78	6- 9-28	8.10	9-27-28	424.66	424.66			8.10	7,899.00	8,709.00	9-27-28	3,163.78	
12- 4-28	614.50	6- 9-28	8.10		—o—				8.10	5,256.33	5,264.43	12- 4-28	614.50	
1-12-29	2,013.33	6- 9-28	8.10		—o—				8.10	2,208.69	2,216.79	1-12-29	2,013.33	
5-11-29	373.76	6- 9-28	8.10		—o—		2-27-29	3.22	3.22	759.73	762.95	5-11-29	373.76	
6-24-29	20,214.44	2-27-29	3.22		—o—				3.22	37,684.82	37,688.04	6-24-29	20,214.44	
8-24-29	381.09	2-27-29	3.22		—o—				3.22	1,041.58	1,044.80	8-24-29	381.09	
9- 7-29	5,000.00	2-27-29	3.22		—o—		8-30-29	2.54	2.54	8,766.72	8,769.26	9- 7-29	5,000.00	
10-25-29	3,061.00	8-30-29	2.54		—o—				2.54	3,318.55	3,321.09	10-25-29	3,061.00	
													$56,072.10	$1,807.11
Total.....	$57,879.21													

X*Note—This item was returned to the trust as set forth on page 1436 of Plaintiff's Exhibit 210A.

1669 The Witness:

In Plaintiff's Exhibit 210, pages 1418 and 1419, I have traced an item of $11,000.00, and explained it; there was another check of like import of $10,000.00, payable to the Security National Bank, which was not deposited in the City National Bank, but which was treated by the cross complaint of Wichita Royalty Company as having been deposited in the City National Bank—I make no reference to a check of $10,000.00, for the reason I used the larger of the two checks on pages 1418, 1419 and page 1420. In other words, if I had used and shown the $10,000.00 check, I necessarily would have had to use the value of the trust fund deposits, which would not have shown the minimum balance.

I have also worked out a schedule and analysis following the cross complainant's bill of complaint, in an effort to account for and to show an accounting and disposition of the various transactions in the bill of complaint, of Wichita Royalty Company, beginning in 1923, and going through all of the various transactions, showing how Mr. Peckham accounted, in so far as I was able to do so, for the moneys which were transferred to him during that period of time. I will hand these two instruments to the examiner, and they are marked "Plaintiff's Exhibits 212 and 212a," and are numbered in reverse order as to point of time. These two exhibits is the report I have made of the application on G. W. Peckham, on the alleged trust funds which he is alleged to have received from the Wichita Royalty Company for the period

1670 beginning October 8, 1925, and ending with his death. Exhibit 212 represents the period beginning October 8, 1925, and ending with his death in November, 1929. 212-a represents the period beginning January 1, 1923, and ending October 8, 1925. Mr. Carson and I have been working together on this report. I heard Mr. Carson's testimony in respect to these various schedules, and items. As a predicate for the items set forth in Plaintiff's Exhibit 212, I used the cross complainant's amended bill of complaint. Beginning on page ....

of the cross complainant's re-casted pleading, in paragraph 17. There is a description and list of vouchers and checks for which recovery is here sought, continuing on page .... down to paragraph 18, comprising some forty or fifty separate items, the first one being check No. 427, for $5,500.00, that item is the first alleged defalcation of Peckham in this amended or recasted pleading. Following that is several continuous items in that paragraph of alleged misappropriations, about sixty of them. I went through those and furnished them in this report, as well as other alleged items of defalcation represented by the transfer or deposit of funds by G. W. Peckham from the royalty company account in the City National Bank, as well as all independent deposit of funds by G. W. Peckham to the City National Bank, which were not, in fact, transferred—Plaintiff's Exhibits 212 and 212a, reflect all of those facts. This is a correct report in so far as the books and records of the royalty company, canceled checks and vouchers, of G. W. Peckham and other books and records of the City National Bank that we were able to find.

1671

Respecting the $5,500.00 items, the first one, our investigation shows that G. W. Peckham acquired property No. 81, for the Wichita Royalty Company October 19, 1925, for which Peckham paid draft through the First National Bank in Wichita Falls in the sum of $2,250.00, plus exchange of $2.25; then as additional expenses which he paid in connection with the acquisition of property No. 81, were revenue stamps bought by him on October 23, 1925, amounting to $2.50, the commission paid by him to C. A. Rogers on October 26, 1925, of $225.00; a total expense to E. C. DeMontel on November 3, 1925, in the amount of $25.00. Then in addition to this property No. 81, he acquired property No. 82. Property No. 81 was the Cross Plains property in Callahan property acquired from Mathis and wife.

He acquired Property No. 82 for the Wichita Royalty Company, for which property Peckham paid B. L. Fain on November 13, 1925, the sum of $1,500.00. This prop-

erty is known as the Kunkle property. The balance of the $5,500.00, or $1,500.00 Mr. Peckham came to the Wichita Royalty Company on November 5, 1925, and the Wichita Royalty Company deposited his check for $1,500.00 in the bank account of the City National Bank in Wichita Falls. All of the various checks, deposit slips and receipts evidencing this transaction have been offered in evidence. Mr. Peckham actually expended for the benefit of the Wichita Royalty Company or for the title and royalties of the Wichita Royalty Company, a little over four thousand dollars out of that check. He paid back to the Wichita Royalty Company the sum of $1,500.00, and he spent $4.75 more than the check amounted to, which was later paid Mr. Peckham by the Wichita Royalty Company, which check has been offered in evidence. My examination shows that the Kunkle Royalty, as well as the Cross Plains Royalty has remained in the name of the Wichita Royalty Company since that purchase, and that the Wichita Royalty Company has received the royalty from the property, and the royalties have exceeded twice the amount of the cost price.

1672

The second item of defalcation is check No. 451, it relates to the Wichita Royalty Company's property No. 83, known as the Porter Ranch. Mr. Peckham received this $1,250.00 from the Wichita Royalty Company to be deposited in his account, and in the acquisition of this property he paid to Knight and Hines the following sums: On December 21, 1925, he paid $1,200.00; on January 2, 1926, he paid $50.00, being the balance in cash down payment on this property, that is for the acquired interest known as the Porter Ranch, which the royalty company paid to Peckham, $1,250.00, and put the money in his individual account and expended the exact amount for the property. The books and records of the Wichita Royalty Company reflects that it owns this property, from the time the original check was issued, all the way through.

I am familiar with the method of making income tax reports on the part of trust associations; it is necessary that they file their return on a prepared form
1673 under the revenue act in effect at that time. It requires that they show their opening balance sheet, and closing balance sheet for the period, together with their operating statement for the taxable period; a schedule of depletion claimed on producing properties and a schedule of depreciation claimed on assets subject to depreciation and a schedule showing the changes, if any during the taxable period, in their surplus account and the net of such changes; and it is further necessary, of course, that the return be sworn to by some officer of the association filing such return. In this investigation I have not been furnished copies of the Wichita Royalty Company's income tax report, and was not able to secure the same.

As to whether or not the joint owners of the Porter Ranch paid for the purchase and expense of the Porter Ranch, like amount as the Wichita Royalty Company, I determined that only in so far as it affected J. T. Harrell and the Wichita Royalty Company. In that instance, Mr. Harrell paid his rateable share of the cost and the Wichita Royalty Company, through G. W. Peckham, paid their rateable share of the cost of the property, as well as did the other owners who had an interest in the property; however, I did not investigate whether or not or in what manner the other owners paid their part of the cost of the property. As far as I could determine, the royalty company received its pro rata part of the rentals that accumulated or came in on the Porter Ranch during the time of Peckham's administration and prior to the time of his death. The next item
1674 charged against Mr. Peckham as misappropriation, check No. 542, for $5,000.00, that represents the first payment made by the Wichita Royalty Company to G. W. Peckham for what is known as the Stephens Royalty for their property No. 84. That item is the initial payment of the purchase of that royalty, there are various

other payments shown in this same list, which are charged as misappropriations against George Peckham for the same property. The items are—check No. 458, for $5,000.00, issued January 11, 1926, and check No. 461 for $15,769.07, issued January 18, 1926. The total of the checks being $25,769.07, and were deposited in Peckham's individual bank account. The voucher of the Wichita Royalty Company reflected those checks were for the purchase of the Stephens Royalty. Peckham paid for those purchases $22,201.32 plus $175.00 interest, plus his interest in what is known as the Curlee land, which was a half interest in a forty acre tract of land adjacent to the City of Wichita Falls, the total expended by Peckham from his account was $22,376.32, plus $2,567.75, which he paid for his interest in the Curlee land. He made this purchase from Mr. Harrell and Mr. Basham, and that matter has been thoroughly gone into and testified about heretofore. The statement of Mr. Harrell on the former trial, in 1932, that he received $20,000.00 cash consideration was incorrect; he actually received, he and Basham together, $22,201.32 as the principal payment on this property, plus $175.00 interest on the deferred payment, making the total amount which they received of
$22,376.32, which amount was divided equally be-
1675 tween them and deposited in the respective bank accounts. I verified that statement from their individual ledger accounts in the bank, from the original deposit slip, evidencing deposits to those ledger accounts, and from G. W. Peckham's canceled checks, and from the instrument of conveyance itself. It seems that Mr. Harrell testified that he received $20,000.00 for this property, he forgot the cash down payment which Mr. Peckham made on the property and only testified as to the amount of the notes which he took.

Mr. Rogers:

I understand we have an agreement throughout Mr. Lambert's testimony that all of these conclusions that he testified to are objected to by us and it is a continuing

objection and applies to his reports and testimony in so far as any part of it may or may not be a conclusion, the objection is continued throughout his testimony.

(Whereupon the Court ruled that the objections were good as to the testimony, but being an equity case the entire record would probably go upon appeal.

The Witness:

Mr. Harrell actually received a cash payment of $2,201.32, and that, added to the note, aggregates $22,201.32. The record shows that since the time the first check was issued for this property, $5,000.00, that the books and records of the Wichita Royalty Company show the ownership of the royalty company of this Stephens *Royalty. The books and records of the Royalty Company*
show that the royalty company received, applied,
1676 or appropriated to its use, the oil runs from this property from January 1, 1926, until the time the properties were sold by the Royalty Company. The records also show the approximate amount of oil produced from this property, the value of it, which is a substantial amount, and is in evidence. The books and records of the Royalty Company show that when the property was sold the Royalty Company retained for its own use and benefit the proceeds of the sale.

I have also treated check No. 478, $17,623.00, and check No. 479, $6,000.00; those two checks total $23,623.70, issued to George W. Peckham and check $17,623.70, was made payable to the City National Bank and was deposited in Peckham's account in the City National Bank; the check for $6,000.00 was made payable to the Security National Bank and was deposited in Peckham's account in that bank. I know that to be true from the records of the City National Bank in the case, and from Peckham's bank statement covering the month of March, 1926, of the Security National Bank, which shows that deposit. It represents a purchase by the royalty company of what is known as a half interest in the Marlborough Addition.

I find among the records a deed from Peckham to the Royalty Company for a one-half interest in that addition, and a letter which has been offered in evidence, transmitting that deed. The books and records of the Wichita Royalty Company show that that was an asset of the Royalty Company since the date of the original check, and considered such by the royalty company up until
1677 the filing of this suit. That matter has been gone into at greath length, the Marlborough purchase. It was the purchase of a suburban venture owned by Mr. Kemp originally, Mr. Harrell and G. W. and W. H. Peckham.

The next item, $7,500.00, was a check No. 485, dated March 31, 1926, and represents an advance by the Wichita Royalty Company to pay their part of the development cost of the Marlborough Addition property; Mr. Peckham deposited this check in his personal account at the City National Bank and paid out of his personal account at the Security National Bank, on the same day, to the Marlborough Addition, the same amount of money.

The next item, check No. 495, for $300.00, issued on April 23, 1926. This check was in payment of interest of Wichita Royalty Company's note No. 72,690, amounting to $15,000.00 held by the City National Bank of Wichita Falls; this sum was applied directly in payment of that interest and did not enter into G. W. Peckham's individual bank account, nor was it in any way applied against his personal liability to the bank.

The next item, No. 503, issued on May 20, 1926, $3,000.00, together with checks Nos. 507, for $1,500.00, issued May 29, 1926, and check No. 510 for $4,500.00 issued on June 16, 1926. Check No. 519, issued July 13, 1926, in the amount of $1,000.00 were all issued for the same purpose, and totaled $10,000.00. These funds were received from the Wichita Royalty Company by G. W. Peckham's to pay the Royalty Company's portion of the improvements in the Marlborough Addition
1678 property and were applied by Peckham's to said royalty company's payment of their assessment

by the following payments made by Peckham from his individual account to the Marlborough Addition; on May 20, 1926, G. W. Peckham paid from his personal account to the Marlborough Addition, the sum of $2,000.00; on June 7, 1926, he paid to the Marlborough Addition from his individual account, $1,000.00; on June 2, 1926, he paid Marlborough Addition from his individual account, $1,500.00; on June 19, 1926, he paid the Marlborough Addition from his individual account $4,500.00; on June 23, 1926, he paid the Marlborough Addition from his individual account, the sum of $1,000.00; making a total he paid from his individual account of $10,000.00 being the same amount advanced to him by those four checks by the Wichita Royalty Company. Mr. Peckham's personal check, shown by the books and records of the Marlborough Addition were for the same purpose that the voucher notation shows, to provide funds with which to develop the property.

The next item, of alleged embezzlement and misappropriation by George W. Peckham is No. 506, for $500.00; this check was issued on May 29, 1926, and was payable to the City National Bank. The Royalty Company's voucher notation states that it is interest on their notes at the bank, and it was issued to pay interest on Wichita Royalty Company's note No. 74,590, amounting to $25,000.00 and held by the City National Bank. This check was applied direct by the bank to pay that interest and did not enter into Mr. Peckham's account and was not applied in any manner to his personal indebtedness to the bank.

1679

Mr. Rogers:

We do not object to the proof of the payment by the Royalty Company direct upon that which was shown to be the liability record of the trust with the bank, but we object to the inference of counsel and the witness that these items are charged as embezzlements, in the light in which the implications are made, in that the suit by the royalty company is one for an accounting. A suit in defense of the notes declared upon by the bank, which

admittedly arises out of and/or renewals of the $15,000.00 and $25,000.00 loans, negotiated between J. T. Harrell and G. W. Peckham in January and March, 1926, respectively, and the Supreme Court of Texas has held that it is an issuable question of fact whether the proceeds of these loans were used for other than trust purposes, and whether or not the loans in fact were made for the personal benefit of G. W. Peckham, and if it be determined that these two loans, or any part thereof, was made for the personal benefit of G. W. Peckham and the proceeds thereof used for unauthorized trust purposes, then the payments made by Wichita Royalty Company upon the liability record standing in its name upon the records of the bank, would be a payment not of its own debt, but the debt of G. W. Peckham. This objection is made that the record may be here understood in the light in which the pleadings seek to hold the bank in this lawsuit, and seek to defend against the obligation declared
1680 upon by the City National Bank.

The Witness:

Next check, No. 521, dated 7-16-26, for $300.00, was issued on that day, made payable to the City National Bank and the Wichita Royalty Company's voucher notation supporting the issue of this check, states that it is to apply on interest on their notes at the City National Bank. This check was applied directly by the bank upon note No. 76878, amounting to $15,000.00 and being the Wichita Royalty Company's note held by the City National Bank; and this $300.00 did not enter into George Peckham's individual account and was not applied in any manner to his personal indebtedness to the bank.

The next check is 525, for $4,000.00, dated August 2, 1926. That, together with three other checks, constitutes a single transaction. The three other checks being No. 532, issued August 27, 1926, in the amount of $4,357.58, and check No. 556, issued December 22, 1926, in the amount of $700.00; and check No. 556a, issued December 22, 1926, and being in the amount of $538.16. The sum of

these four checks being $9,595.74. The voucher notations show that these checks were issued to pay a note which was maturing in September, 1926, against the Marlborough properties. The note was payable to the Highland Irrigation Company who originally sold this property, the originators of the addition. The records show that on October 15, 1926, Mr. Peckham paid with his personal check from his individual bank account to the Highland Irrigation Company, the sum of $9,595.74, being
$7,738.50 of principal of the maturing note, plus
1681 $1,857.24, of interest due on the series of notes,
which were owing by the Wichita Royalty Company on this property. In other words, Mr. Peckham paid from his personal account this sum represented by the four Wichita Royalty Company checks for that very purpose that the voucher notation showed this check was issued for, that is shown by Mr. Peckham's bank statement and the books of the Marlborough Addition and the deposit slips, etc., that have been gone over heretofore and offered in evidence, beginning with the deposit slip of the Highland Irrigation Company showing they received this money from Peckham. It says that Mr. Kemp and Mr. Harrell paid a rateable like amount.

The next item is check No. 431, issued August 27, 1926, in the amount of $500.00. The voucher notation being, a part of the Wichita Royalty Company's record, and supporting the issuance of this check, states that it is to pay interest upon their note at the City National Bank. This check was applied directly by the City National Bank to pay the interest upon the Wichita Royalty Company's note No. 78450, and amounting to $25,000.00 and did not enter into G. W. Peckham's individual account, nor was it applied in any manner against his personal liability to the bank.

The next check is No. 540, issued on October 13, 1926, and amounting to $300.00. The voucher supporting the issuance of this check by the Wichita Royalty Company states that it is to apply on interest on their notes at the

City National Bank. This check was not applied
1682 directly by the City National Bank against the Wichita Royalty Company's note No. 80,371, amounting to $15,000.00, and did not enter into G. W. Peckham's individual account, nor was it applied in any manner against his personal indebtedness to the bank.

The next check, or series of checks, being four in number, are as follows: No. 598, issued April 11, 1927, made payable to B. L. Fain, amounting to $500.00. Check No. 602, issued April 23, 1927, payable to B. L. Fain and amounting to $1,000.00. Check No. 607, dated May 6, 1927, made payable to B. L. Fain in the amount of $500.00. Check No. 610, issued May 16, 1927, payable to B. L. Fain in the amount of $1,000.00. These four checks total $3,000.00. And the voucher notation supporting the issuance of these checks by the Wichita Royalty Company state that they are to purchase oil runs from the Millner tract in Wilbarger County. And on April 15, 1927, B. L. Fain transferred $4,200.00 of oil runs to the Wichita Royalty Company by assignment, and these oil runs were designated on the books of the Wichita Royalty Company as property No. 97. And all of the above checks, except the one numbered 598, in the amount of $500.00, and being the first of the series issued, were indorsed by B. L. Fain to G. W. Peckham and deposited to Mr. Peckham's personal account. However, the check No. 602, which Fain indorsed and G. W. Peckham indorsed, and deposited in his personal account, is offset by a check issued by Peck-
ham on his personal account on the same date
1683 and given to B. L. Fain for the same amount for $1,000.00; in other words, the net result is that B. L. Fain got $1,500.00 of this $3,000.00, and G. W. Peckham received $1,500.00 of the $3,000.00.

This was a purchase of the Millner oil payment of $4,200.00 the purchase price was $3,000.00. Of the purchase price Fain received $1,500.00 and Peckham $1,500.00. That is the story of this transaction. The payee was B. L. Fain, as in the other checks.

The next check, No. 557, dated December 7, 1926. amounting to $1,920.00, to acquire property No. 94. This

check did not pass through Mr. Peckham's account in any manner, and was applied directly to pay a draft drawn with a deed covering this royalty attached. The Wichita Royalty Company acquired the property designated in the voucher supporting the issuance of this check and their books reflect that they owned that property, which is property No. 94, known as the Hartley County Royalty. This $1,920.00 went to pay a fellow by the name of Perkins for the transfer of a certain royalty in a section of land in Hartley County, the title to which has been in the Wichita Royalty Company's name during this period of time, since the issuance of the check. I have gone into that rather fully up to this time.

The next is check No. 559, issued January 11, 1927, and amounting to $300.00. The voucher notation supporting the issuance of this check by the Wichita Royalty Company states that it is to apply on interest of the
1684 notes at the City National Bank. This check was applied by the City National Bank directly against the Wichita Royalty Company's note No. 84,218, amounting to $15,000.00 and did not enter into G. W. Peckham's individual account, nor was it applied in any manner against his individual indebtedness to the bank.

The next two items, checks No. 571 issued January 19, 1927, in the sum of $2,000.00 and check No. 579, issued February, 1927, in the sum of $2,500.00. Check No. 571 is supported by a voucher which originally stated that it was to purchase royalties, but was later changed to read that it was to apply on notes to the City National Bank. Check No. 579, in the amount of $2,500.00, was supported by voucher which stated that it was issued to pay the company's note at the bank. I could not find where either of these checks were applied to the purposes stated in the voucher supporting their issuance. In other words, that is an item I have been unable to trace as to what Peckham did with the money. They are included in the claim which Scannell filed with the administrator of the estate of G. W. Peckham, showing an aggregate of $19,000.00 due by Peckham to the Royalty Company at the time of

his death. That statement is Plaintiff's Exhibit 48. The date of the claim is December 16, 1930.

The next checks are Nos. 582 and 584, both issued on March 1, 1927, and both for the sum of $500.00, making a total of $1,000.00. The voucher notation on those checks,
to pay interest on notes at the City National
1685 Bank. One of the $500.00 items was to reimburse
G. W. Peckham for that amount, which he paid from his individual account on December 8, 1926, to the City National Bank to apply on the Wichita Royalty Company's indebtedness to that bank, and the interest which had accrued upon note No. 81,992, for $25,000.00. The other check was issued as evidenced by the voucher notation supporting the issuance for the purpose of paying interest on the Royalty Company's note at the City National Bank and was applied directly by the bank against the Wichita Royalty Company's note No. 86,209, for $25,000.00, and did not enter into Peckham's individual account, nor was it applied in any manner against his individual indebtedness to the bank. The money was used for the purpose indicated in the voucher of the Wichita Royalty Company.

The next item being checks 550, 554, and 583. 550 was issued on November 20, 1926, in the sum of $7,500.00. 554 was issued on December 2, 1926, in the amount of $1,500.00. Check No. 583 was issued on March 1, 1927, in the amount of $301.82, making a total of $9,301.82. The vouchers supporting the issuance of these two checks show that they were for the following purposes, to purchase property No. 95 at a cost of $5,000.00; to purchase No. 96 at a cost of $3,000.00; to purchase property No. 93, at a cost of $160.00. To pay maturing obligations against the Wichita Royalty Company's Porter Ranch property in the amount of $1,141.82, making a total of $9,301.82.
Out of these funds and out of his individual ac-
1686 count at the City National Bank, G. W. Peckham, on December 2, 1926, paid to W. T. Knight the principal and interest due on December 1, 1926, on the notes against the Wichita Royalty Company's prop-

erty No. 93, being the Porter Ranch, the principal included in that payment was $920.83, and the interest amounting to $220.99, or a total application to the Porter Ranch obligation of $1,141.82. On October 8, 1926, G. W. Peckham transferred to the Wichita Royalty Company their property No. 93 for which, on November 9, 1926, he paid to A. A. Beard the sum of $160.00.

That is property No. 93, royalty on one hundred and sixty acres in Ellis County, Oklahoma.

Property No. 96, as shown by the voucher notation held in the office of the Wichita Royalty Company purports to be an interest in what is known as the Paulk lands in Archer County, Texas, and property No. 95 purports to be an interest in the east half of lot 10, north Anderson Ranch, Archer County, Texas. The royalty company's books and records reflect that they own this property. However, I have not identified definitely the payments made by Peckham for the acquisition of this property or these two properties, Nos. 95 and 96. I have identified substantial moneys paid by Peckham to F. O. Harrell, F. O. Harrell it appears was a broker or a royalty lease trader operating out in this territory. I have been unable to show that Mr. Peckham used this money from his personal account for the acquirement of these properties,
1687 in the identical amount for which the checks were issued. I could not find where he paid that identical sum to Harrell for these specific properties, however, during that period and about that time, he was paying Harrell considerable moneys, as evidenced by numerous checks, and there were no notations on the checks, nothing by which you could identify the transaction.

Direct Examination.

By Mr. Morrow:

The significance of the fact that I found a number of checks from Peckham to Harrell is that Harrell owned the identical interests which the royalty company's rec-

ords reflect they bought. The deed records of Archer County so reflected. The account filed against the estate of G. W. Peckham by Mr. Scannell included those items as stated. I do not purport to know just what explanation Mr. Scannell must have had, or what reason he had for not including these items in the account which he filed in December, 1930. I do not know where F. O. Harrell lived at that time. I do not know whether there was a conveyance from F. O. Harrell to the Royalty Company or not, I simply found none of record in the deed records of Archer County.

Direct Examination.

By Mr. Humphrey:

The only thing the record shows is that F. O. Harrell owned a like interest, that the books and records of the Royalty Company showed they acquired.

The next item, check No. 591, issued on March
1688 23, 1927, in the sum of $2,000.00. The voucher notation supporting the issuance of this check by the Wichita Royalty Company, states that it is to apply upon their note at the City National Bank. I am unable to find where G. W. Peckham applied this $2,000.00 in accordance with the voucher notation. This item is included in the claim filed by E. E. Scannell against the estate of G. W. Peckham, known as Plaintiff's Exhibit 48.

Check No. 599, issued April 14, 1927, in the amount of $300.00. The voucher supporting the issuance of this check by the Wichita Royalty Company states that it is to apply upon their indebtedness at the City National Bank, and was applied by the City National Bank directly against their note No. 87,810, in the amount of $15,000.00 and did not enter into G. W. Peckham's individual account, nor was it applied in any manner against his indebtedness to the bank.

The next check, No. 615, dated June 8, 1927, in the amount of $500.00. The voucher supporting the issuance of this check states that it was applied against their note

at the City National Bank. The City National Bank applied this check directly against the Royalty Company's note No. 89,764, in the amount of $25,000.00. This item did not enter into G. W. Peckham's individual account, nor was it applied in any manner against his indebtedness to the bank.

The next item, $1,500.00, check No. 628, issued July 16, 1927; the voucher notation supporting the issu-
1689 ance of this check by the Wichita Royalty Company states that it is to apply upon their note indebtedness at the City National Bank. The City National Bank applied this check directly to Wichita Royalty Company's note No. 91,730, amounting to $15,000.00, and was applied to pay interest in the sum of $300.00 and to pay principal in the sum of $1,200.00. This check did not enter into G. W. Peckham's individual account, nor was it applied in any manner against Peckham's individual indebtedness to the bank.

The next list or group of checks, being checks 620, 635, 650, 657, 710 and 752, issued on the respective dates of June 8, 1927, August 16, 1927, October 14, 1927, November 5, 1927, April 20, 1928, and September 27, 1928; and in the respective amounts of $1,200.00, $1,500.00, $2,400.00, $1,800.00, $1,850.00, and $424.66. Totaling, in the aggregate, $9,174.66. The voucher notations supporting these checks states that they were to apply upon the Wichita Royalty Company's note indebtedness at the City National Bank. These funds, and each of them, were deposited in G. W. Peckham's individual account at the City National Bank. And out of that account G. W. Peckham made the following payments to the City National Bank, which were applied by the bank upon the Wichita Royalty Company's notes. On August 31, 1927, out of his individual account he paid the City National Bank $500.00, which was applied against the interest accumulated against the Wichita Royalty Company's note No. 93,429, in the sum of $25,000.00. On October 19,
1690 1927, he paid from his individual account to the City National Bank the sum of $1,336.00 to apply

against Wichita Royalty Company's note No. 3347 in the sum of $13,800.00. This payment was applied by the bank to pay $256.00 interest and $1,060.00 principal. On November 25, 1927, Peckham paid to the City National Bank from his personal account the sum of $1,500.00, which was applied by the bank against the Wichita Royalty Company's note No. 4558 in the amount of $25,000.00. In the application it paid $500.00 interest and $1,000.00 principal. On February 15, 1928, G. W. Peckham paid from his individual account to the City National Bank the sum of $3,485.33, which was applied by the bank against the Wichita Royalty Company's note No. 7,552, in the sum of $24,000.00. This being used to pay $3,000.00 on principal and $485.36 interest. On September 27, 1928, G. W. Peckham paid from his individual account to the City National Bank the sum of $424.66, which was applied by the City National Bank against the Wichita Royalty Company note No. 15,381, in the sum of $21,000.00. This payment was applied to pay the interest on this note, making a total application of payment by G. W. Peckham out of his individual account to the City National Bank of $7,244.99, which was applied by the City National Bank against the notes of the Wichita Royalty Company which were held on those respective dates by the City National Bank. This application of $7,244.99 is $1,929.67 less than the total of the six checks which the Wichita Royalty Company issued him for the payment, or rather
1691 to be applied in payment against their notes at the City National Bank.

I have been unable to determine what use he put that difference to. These checks of the Wichita Royalty Company, which I have read off, in my item 35, 37, 38, 39, 41 and 45, comprise a part of the claim made by the Wichita Royalty Company against the estate of G. W. Peckham after his death. They comprised $1,929.67 of that claim, which is the difference between the sum of the checks that the Wichita Royalty issued to G. W. Peckham and the amount of the checks which G. W. Peckham issued to the City National Bank to be applied against the Wichita

Royalty Company's indebtedness to the bank, and for which amount Mr. Scannell gave Mr. Peckham credit in the claim he filed against the Peckham estate.

The next item, being a group of checks, Nos. 682, 717, 721, 733, 768, 791, 814, 824, 836, and 856, issued on the respective dates of January 28, 1928, May 17, 1928, June 1, 1928, July 23, 1928, December 4, 1928, February 19, 1929, June 7, 1929, July 15, 1929, August 30, 1929, and November 23, 1929; and for the respective sums of $2,000.00, $22.00, $424.66, $220.00, $2,000.00, $1,500.00, $1,500.00, $212.49, $1,000.00 and $1,500.00. The voucher notations support the issuance of these checks by the Wichita Royalty Company and each of the checks were payable to the City National Bank, and states that they were to apply on the Wichita Royalty Company's indebtedness at the City National Bank, and each of these checks on the date it was paid, was applied by the City National Bank against the Wichita Royalty Company's note held by the bank on that date, and none of the checks entered into G. W. Peckham's individual account, nor were any of them applied in any manner to pay G. W. Peckham's personal indebtedness to the City National Bank. In other words, those moneys were merely transferred to Peckham's account and by Peckham transferred out of his personal account to the payment of the royalty company's notes. None of these checks went to G. W. Peckham's account, they were paid by the royalty company direct to the City National Bank and were applied directly by the City National Bank against the Wichita Royalty Company's liability to the bank. That traces all of the items in paragraph 17, of this petition, down to the date of Mr. Peckham's death.

1692

Paragraph 18 of the petition charges that the trustees misappropriated the proceeds from two royalties sold; the proceeds from either of those royalties never went into the account of the Wichita Royalty Company in this bank. The history of my investigation in respect to those items is as follows: The Vaughan royalty which they allege as a misappropriation of funds, and connected up

with the $6,000.00 cashier's check, G. W. Peckham deposited to his personal account on February 15, 1929. I am unable to identify from the check, this as being the Vaughan royalty, because the check was a cashier's check issued by the Wichita State Bank and Trust Company to W. C. Duncan and W. C. Duncan indorsed that check to G. W. Peckham, and in the indorsement he
1693 makes a reference to the Bristow Royalties and I do not recall any Bristow Royalties which the Wichita Royalty Company owned. There was no indicia of ownership on the part of the royalty company evidenced by that check, and against that check of $6,000.00, Mr. Peckham paid out of the personal account of White and Duncan, the commission of $300.00 on February 16, 1928. The day after he made this deposit of $6,000.00. However, his check was issued at the same time, but was not paid until the following day, which was on the 16th.

There is another item of $6,000.00, that was on the Wilson Royalty which was sold and the proceeds of which went into G. W. Peckham's account on the following date; December 5, 1927, he deposited $2,400.00; on January 9, 1928, he deposited $1,200.00; on January 5, 1928, he deposited $1,200.00 on principal and $24.00 interest; on February 29, 1928, he deposited to his individual account, $1,200.00 principal and $24.00 interest, making a total deposit to his personal account of $6,048.00, against which he paid W. C. Duncan on December 6, 1927, a commission of $300.00, out of his individual account. There is nothing available from which I can find the nature of these payments as to the Wilson Royalty, whether they were in cashier's checks, cash, or personal checks, I could not tell who they were payable to, all I know is the amounts and the dates on which they were deposited. They were not paid to G. W. Peckham by the Wichita Roy-
1694 alty Company and none of these payments went into the deposit account of the Wichita Royalty Company—I am able to ascertain that.

As to the statement that I have covered all of the items in paragraph 17, after George Peckham died, there is a

charge of misappropriation by the trustee, I have checked those, but these funds were applied to the purposes stated in the vouchers, supporting the issuance of the respect checks, Nos. 880, 890, 898, 908, 920, and 930. They were all issued after Peckham's death and after E. E. Scannell became trustee, I will give a history of each one of those checks. No. 880, payable to the Marlborough Addition for $1,500.00, issued January 24, 1930, was a loan and it was so reflected by the Texas Investment Company books; it was a loan to the operating company of their Marlborough Addition property. Check No. 890, dated February 20, 1930, for $1,000.00 was issued to the City National Bank to apply to their indebtedness at said bank, and was applied on their indebtedness, that is, Wichita Royalty Company's indebtedness.

Check No. 898, issued April 10, 1930, for $1,000.00 was payable to the bank and was to be applied upon the Wichita Royalty Company's indebtedness at the bank, and was applied on their indebtedness by the bank. Check No. 908, issued May 13, 1930, in the sum of $500.00, to the Texas Investment Company, went to the Texas Investment Company, the proceeds of that check.

1695 Check No. 920, issued June 14, 1930, in the amount of $1,500.00 and payable to the bank, was to be applied against the Wichita Royalty Company's indebtedness to the bank and was applied by the bank against that indebtedness. Check No. 930, issued July 14, 1930, in the sum of $3,055.42 and payable to the bank, was to be applied against the Wichita Royalty Company's note or indebtedness at the City National Bank, and was applied by the bank against their indebtedness. That is the last item appearing in Paragraph 17.

Those checks above referred to were all issued after Mr. Peckham's death and after Mr. Scannell became trustee.

The next report I have is Plaintiff's Exhibit 212a, which takes up those items which were allegedly not made the basis of any recovery until after the reversal of

the case by the Supreme Court of Texas ,and which were not included in the suit tried, originally filed and tried, in the State Court. These items, beginning January 1, 1923, and continuing until October 8 1925.

The first item, two checks, No. 1,194, and 1,238, issued under dates of January 16, 1923, and February 21, 1923, and in the amounts of $1,040.00, and $1,046.66. The voucher notation supporting the issuance of these checks states that they were to apply on the indebtedness of property No. 36, 37, and 52, in the Wichita Royalty Company in the Curry pool, which property was bought from G. W. Peckham prior to the time he took his office as trustee of the Royalty Company and refer to payments still due on the property for the purchase price.
1696 The Royalty Company's records themselves state that the payments were $1,000.00 each and the odd dollars are designated as interest to those two payments, that is the two payments, two deposit slips that Mr. Deaton testified to. The next item being check No. 1,281, issued April 2, 1923, in the amount of $1,520.00. This represents a maturing payment of the Wichita Royalty Company property No. 67, and evidenced by the Wichita Royalty Company voucher supporting the issuance of this check and was bought from B. L. Fain. This check, together with the two preceding checks, were not complained of by the Wichita Royalty Company, but were included herein, merely to complete an analysis of all of the items paid by the Wichita Royalty Company to G. W. Peckham after he became trustee. And save and except, of course, the payments made to G. W. Peckham for salary and incidental expenses. The next check being for $1,006.67 likewise was not complained of by the Wichita Royalty Company in this suit, and was issued as a payment on properties which had been purchased from W. H. Peckham prior to the time Mr. G. W. Peckham took office as trustee The check was payable to bearer, when I say bearer, this check was payable to the Security National Bank, deposited in the City National Bank under Mr. Peckham's individual account.

The checks I testified to yesterday were also made payable to G. W. Peckham, however, in explaining this $1,006.67, which went into Mr. Peckham's individual account, he issued his personal check on his personal account for a like amount to W. H. Peckham, a few days later, subsequent to the time he deposited this item in his account.

1697

From my investigation, the very beginning of Mr. Peckham's administration in 1923, it shows that the checks issued to him for the purchase of royalties, salaries and expenses, was very frequently payable to the City National Bank. That was the practice he would employ prior to the time he took office. I went back behind that and examined all the checks which they issued, and not only were the checks which were issued to G. W. Peckham made payable to the bank, but checks issued to other parties for the purchase of properties were frequently made payable to the bank. That was the practice when the deposit account was in the Security National Bank.

This practice of drawing checks payable to the depository bank, was the practice prior to Mr. Peckham's becoming trustee, as evidenced by the vouchers and checks in the files of the Wichita Royalty Company.

Q. And continued throughout Mr. Peckham's administration?

A. Yes, sir.

Mr. Rogers:

The same objection, and the objection is made to apply as well to seeking to vary, by custom, the applicable principles involved with respect to the issuance of the checks drawn upon and payable to the order of the Plaintiff bank, upon the voucher form, referring thereby to the books and records of the royalty company, whereby the payee, depository bank, by the use of but the slightest diligence could have determined that which the trustee caused the books and records of the trust to indicate to be the purpose of the issuance

1698

of the checks and the application to be made of the funds, which inquiry, if pursued with reasonable diligence, would have brought to the bank knowledge of the dual dealings of the trustee and his violation of the terms of the trust.

(Which objection was by the Court overruled, to which the defendant then and there excepted.)

The Witness:

The next item, on Plaintiff's Exhibit 212a, checks Nos. 1,291, issued April 9, 1923, in the amount of $2,516.67 and check No. 1,325, issued May 11, 1923, in the sum of $2,533.33. They are known as items 6 and 9, and they were received by G. W. Peckham and were applied by him to discharge Wichita Royalty Company's obligation on royalties which he sold to them on March 12, 1923, being in payment of Note No. 1, due April 12, 1923, plus interest at eight percent and in payment of note No. 2, due May 12, 1923, plus interest at the rate of eight percent. That is the Grimshaw property. Both of these checks were issued to G. W. Peckham. Grimshaw property purchased from G. W. Peckham. I will explain the payment to B. L. Fain, this item being No. 71, was acquired from G. W. Peckham for a consideration of $7,500.00, the down payment of $2,500.00 went to B. L. Fain and the two notes, or the first payments on the property went to G. W. Peckham, that is, these two items, checks Nos. 1,291 and 1,325, respectively. The down payment, the
1699 check evidencing that payment, was made to the City National Bank and was deposited to B. L. Fain's account in that bank and the voucher notation supporting the issuance of this check by the Wichita Royalty Company states that it is in part payment of royalty interest No. 71, being the Grimshaw property. It never went into the account of George Peckham. The Grimshaw royalty was a royalty that the records show the Wichita Royalty Company acquired from George Peckham—a producing royalty—the records show the

company owned it since the date of acquirement, in 1923, collected and received the oil produced from it, which was more than it cost. As far as the records show, the Wichita Royalty Company still owns it, except for the sale that has been testified to, under the deed of trust.

The next item, check No. 147, issued January 19, 1924, in the sum of $5,000.00 payable to the City National Bank and deposited to G. W. Peckham's account. Voucher notation supporting the issuance of this check by the Wichita Royalty Company states, "to apply on royalties purchased," Mr. Peckham deposited this check in his account on January 19, 1924, and on February 2, 1924, having not purchased the properties and transferred the royalty company the property set up in their voucher notation, returned this $5,000.00 to the Wichita Royalty Company by check out of his individual account which was deposited to the credit of the Wichita Royalty Company in the City National Bank on February 2,
1700 1924. That item is included in that date.

The next item, being check No. 160, dated February 9, 1924, and in the amount of $2,500.00, issued and payable to G. W. Peckham and was deposited in Mr. Peckham's individual account in the City National Bank. Voucher notation supporting the issuance of this check states that it is to secure an interest in twenty acres out of Lot 14, Block 27, American Tribune new Colony Lands, Archer County, Texas. On the same date that Mr. Peckham received this check he paid out of his individual account to A. F. Dowden, the sum of $2,500.00, for an interest in the identical lands set out in the Wichita Royalty Company voucher notation, as evidenced by Mr. Peckham's check and the notation written on the check, and the check has been offered in evidence. The check has not been offered in evidence.

Mr. Humphrey:

We offer the check in evidence.

PLAINTIFF'S EXHIBIT 213.

Wichita Falls, Texas, Feby. 9, 1924. No. . . . . City National Bank of Commerce "18" Pay to A. F. Bowden or Bearer, $2,500.00. (Signed) G. W. Peckham.

Part purchase price 1/16 int in 20 a out of Lot 14B-27 Am Tribune NCCO. Lands Archer County, Texas. (Perforated) Paid 2-16-24. Indorsed A. F. Bowden.

The Witness:

There is no evidence of this option having been completed, or the company having acquired the property.

1701 The next items, 19 and 20, Nos. 154, issued on February 2, 1924, in the sum of $12,000.00, and check No. 185, issued March 18, 1924, in the sum of $9,250.00, making a total of $21,250.00. The first check of $12,000.00 was issued to B. L. Fain and the voucher notation supporting the issuance of this check by the Wichita Royalty Company states that it was to purchase certain royalty interests, and enumerates several of them, located in Oklahoma. Mr. B. L. Fain indorsed this check for $12,000.00 and G. W. Peckham indorsed it and deposited it to his personal account. The check for $9,250.00 was payable to G. W. Peckham and was deposited in his personal account. And the latter check is supported by a voucher notation stating that it was to acquire 1/64 interest in what was known as the Wilson Royalty. Mr. Peckham acquired the identical property as set out in this latter check issued to him and transferred the identical interest to the Wichita Royalty Company by conveyance under date of April 22, 1924, and designated property No. 75 on the Wichita Royalty Company's records. The voucher showed as to the consideration, cash, $21,250.00, and the assumption of an oil obligation running with the royalty of $6,250.00, payable out of one-half of the first oil sold, making a total consideration in cash and oil of $27,500.00 for their 1/64th interest in the Wilson Royalty. The original voucher notation on the check for $12,000.00 was in error, it was actually a part, I be-

lieve, of the purchase price of the Wilson Royalty and
that belief is supported by the conveyance to
1702 the Wichita Royalty Company and the voucher
notation evidencing check No. 185, which refers to check No. 154, as being also a portion of the purchase price of the Wilson Royalty. The $9,250.00 checks were payable to G. W. Peckham and deposited in his personal account. The Wilson Royalty was in Archer County, a producing royalty. There was one of these royalties that was sold, items of sale of $6,000.00 in 1928, I made an investigation as to that transaction from the records of Archer County and various records of the Wichita Royalty Company and G. W. Peckham's account, so I could explain the whole transaction with reference to the purchase of this royalty. Peckham individually purchased more than one sixty-fourth royalty interest from Wilson, he purchased a full one-eighth royalty interest. He made various sales to other besides the Wichita Royalty Company, along about that same period of time. I have investigated those sales. I was able to get the details of sale and purchase of this property in four transactions, one of the Wichita Royalty Company, one of the United Royalty Company, one of the King Royalty Company and one R. A. King. In each instance it shows that Mr. Peckham charged the Royalty Company considerably less for the interest he sold them, than he charged the others to whom he sold interests. I have used 1/32nd of 1/8th royalty interest as a unit price, that is, in order to reduce all the sales to a common level whereby you could compare the purchase price by one company with the
purchase price of another. Taking one thirty-
1703 second of one-eighth, it cost the Wichita Royalty Company per unit, $6,875.00 in cash and oil. Taking the same as the unit price, it cost the United Royalty Company, per unit $9,000.00 in cash and oil. Taking the same unit price, 1/32nd of 1/8th it cost the King Royalty Company $8,500.00 in cash and oil. The sale to the King Royalty is to R. A. King, the head of that company, that unit price cost Mr. King $10,000.00 in cash and

oil. He sold all of the other parties at a price considerably more than he sold the Wichita Royalty, that is the identical land, and about the same time. The sale to the Wichita Royalty Company was on March 17, the United Royalty Company April 8, 1924, to the King Royalty and R. A. King, March 1, 1924. I have made an analysis of what this royalty produced at the time of the sale, it produced $25,622.22 of oil, for which the Wichita Royalty Company received the benefit either in application against the oil debt or as a deposit of money in their account—$6,250.00 in oil and the balance in cash, which was deposited in their account—all they got in the bank account was $25,000.00 less six thousand, or a total of $19,372.22. This $25,000.00 did not include the $6,000.00 that was realized from the sale of the property—so that added to the $25,622.00, the sale price, of $6,000.00 would give $31,622.22—I did not find where the royalty company got the cash for the sale. The amount of oil produced from the Wilson Royalty, Plaintiff's Exhibit 212a, is $31,622.22.

The next item, check for $1,200.00, issued February 29, 1924, being No. 169; the voucher supporting the
1704 issuance of that check by the Wichita Royalty Company carries the notation that it was issued for the purpose of buying a 1924 Studebaker Special Six automobile for Mr. Peckham; the books of the Wichita Royalty Company reflect that they owned this identical automobile from February 29, 1924, until September 30, 1926, on which latter date they sold this automobile for a cash consideration of $555.00 which was on that date deposited in their account in the City National Bank. The Wichita Royalty Company did have a car prior to that time. It was payment for a Studebaker automobile which Mr. Peckham had bought four or five months previous and for which, on August 25, 1923, he paid the Van Dyke Motor Company of Colorado Springs, the purchase price of $1,702.95. In February he sold it to the company for $1,200.00, a discount of about $500.00. The company sold the car almost two years later for $555.00.

The next item, two checks, No. 237 being the first one, issued on July 2, 1924, payable to the Security National Bank and in the sum of $11,000.00; the second check No. 246, issued July 24, 1924, and payable to the Security National Bank in the sum of $10,000.00, making a total for the two checks of $21,000.00. The voucher supporting issuance of these two checks by the Wichita Royalty Company states that they were in payment of an interest in Lots 9 and 10, block 41, J. A. White lands located in Archer County, Texas, and designated as Wichita Royalty Company property No. 76, these checks were
1705 not deposited in George Peckham's account at the City National Bank, but were paid at the Security National Bank, and as to who they were paid to, I don't know. The checks themselves do not give any indication of who cashed them, or received the money on them. The items of $11,000.00 and $10,000.00 referred to in paragraph 57 of the cross complainant's bill of complaint, were deposited to G. W. Peckham's personal account. The story of that transaction from my investigation is as follows: The books and records of the Wichita Royalty Company reflect that they acquired this property No. 76, being the White lands, and the property for which two checks, No. 237 and 246, aggregating $21,000.00 were issued and they kept this property as reflected by their books, from the date of these checks in 1924, until in January, 1925, and during that period received the oil runs from this property; in January, 1925, their books reflect that this property was sold and that they received their portion of the sale price from B. L. Fain. The record title to that property remained in the name of B. L. Fain, Ross R. Robertson, Murchison and Fain, and A. W. Ross. When the properties were sold they accounted to the Wichita Royalty Company for a certain percentage of the proceeds of the sale, and I might add that J. I. Staley was one of the joint owners of this property No. 76. The interest of the Wichita Royalty Company was a leasehold and the interest owned was 46/384ths of the leasehold estate. I do know the entire consideration for

the sale. I do know they received the money
1706 represented with their records, to be their portion of the sale price of the property and that they received the sale price from B. L. Fain, paid into the Wichita Royalty Company in two items, and deposited to their credit in their bank account in the City National Bank.

The next item being check No. 3,317, issued December 23, 1924, in the amount of $695.00, payable to G. W. Peckham and deposited to his personal bank account. The voucher notation supporting the issuance of this check by the Wichita Royalty Company states, "to purchase of 1/16th of 1/8th of royalty in one hundred and twenty-five acres known as block 46, of the Mead L. M. Pasture subdivision; the D. G. Thomas Survey, Abstract 458, Archer County, Texas." The identical property described in the voucher notation supporting this check of $695.00 was conveyed to Wichita Royalty Company on December 16, seven days prior to the issuance of the check and was designated on their record as being property No. 78. F. O. Harrell conveyed it to them.

The next is check No. 373, dated May 5, 1925, in the amount of $2,500.00, payable to G. W. Peckham. The voucher notation supporting the issuance of this check states, "To purchase of 1/16 of the royalty interest in Routan land, 117 acres in Archer County, Texas." On that day, the same day that Mr. Peckham received this $2,500.00, he issued his check to Ray and Massie for an identical amount. That is the identical amount of the Royalty Company's check of $2,500.00. And on June 30.

1925, Ray and Massie conveyed 1/16 interest
1707 to the Royalty Company in 117 acres and designated on the Wichita Royalty Company records as being their property No. 79. This property which Ray and Massie conveyed to Wichita Royalty Company was the identical property and the identical interest set out in the voucher notation supporting the issuance of their check for $2,500.00 to G. W. Peckham. The check is already introduced in evidence and marked "Plaintiff's

Exhibit 173." The memorandum on the check, I read that as 1/12 interest in a deal with Allen, Moran and Routan land, but it has been interpreted by others during the course of this suit as a 1/12 interest, the figure is not plain, it is a fractional interest above 1/11. I found no evidence where Peckham individually acquired title to that property or retained any, I have made a check of the records of Archer County, and they do not reveal that George Peckham acquired an interest in this property.

The next is check No. 385, issued June 24, 1925, in the sum of $6,000.00; it was payable to G. W. Peckham and deposited to G. W. Peckham's personal account. Then check No. 387, issued June 29, 1925, in the amount of $5,000.00 and payable to G. W. Peckham and deposited to G. W. Peckham's personal account. I have voucher notation authorizing the issuance of such check with the following notation, "In payment of 1/16 royalty on all of block 21, first tract, east 25 acres, north 50 acres," he means, the "East twenty-five acres of the north fifty acres, west one hundred acres, block; 19 east
1708 sixty acres of the west one hundred and sixty acres of block 119; and the south sixty acres of the west eighty acres block 22, J. L. Anderson south pasture subdivision Archer County, Texas." And 1/8 of royalty on west one-half of the southwest quarter of the northwest quarter of section 2, J. Pointevant Survey, Young County, Texas, being 217 acres in the J. L. Anderson subdivision known as the Norday district, and twenty acres in the Pointevant Survey, Young County, Texas. The royalty company got a deed to the identical properties set forth in the voucher notation, in so far as they cover the hundred and seventeen acres out of the J. L. Anderson Subdivision in Archer County, Texas; which property was designated as their property No. 80, on the Wichita Royalty Company's books. But I cannot find where they did get a deed from G. W. Peckham covering their interest in the Pointevant survey, however, under escrow agreement dated June 22, 1925, at

the First National Bank of Olney, Texas, G. W. Peckham acquired 1/4 royalty in twenty acres in the west half of the west quarter of the northeast quarter of J. Pointevant Survey, Section No. 2, Young County, Texas. Said royalty being acquired from G. W. Vernon, for a consideration of $3,000.00. On June 30, Mr. Peckham transferred one-half of this royalty interest to F. O. Harrell and applied half of the cost against the half interest he transferred to F. O. Harrell, leaves a cost to Mr. Peckham of $1,500.00 for this Vernon Royalty. That is the Pointevant twenty acre royalty. And left in
1709 Mr. Peckham's name the identical interest in the identical property set out in the Wichita Royalty Company's notation before the issuance of these two checks, one for $6,000.00 and one for $5,000.00. In acquiring 217 acres royalty in the J. L. Anderson subdivision, Mr. Peckham, on June 25 ,1925, paid Murchison and Fain Oil Company his personal funds out of the Security National Bank, $9,493.75, and the check being Plaintiff's Exhibit 178, which Mr. Peckham gave against his personal funds to Murchison and Fain Oil Company for the sum of $9,493.75, states down in the left hand corner, "For 1/16 royalty in 217 acres in block 19, 21, 22, south Anderson Ranch," and being the identical number of acres, the identical interest, and the identical blocks of land set out in the Wichita Royalty Company's voucher notation supporting the issuance of their checks for this property. Delivered to the Wichita Royalty Company covering the interest in the property, two deed, the first deed dated July 1, the second deed dated July 20, 1925, both signed by George Peckham, the title coming through Murchison and Fain. I don't know the date of their deed to Peckham. Mr. Peckham's check to Murchison and Fain is dated June 25, 1925, shortly before the first deed was made to the Royalty Company by Peckham—only six days intervening between the deliverance of the deed and the issuance of the check by the Royalty Company. The $1,500.00—the $3,000.00 Peckham check to Vernon, has been exhibited

in evidence; in addition to this check there was produced in this file a deposit slip showing that George
1710 Peckham deposited an additional $1,000.00 in the bank at Olney, I do not have the deposit slips. In other words, he paid $2,997.00 for the Vernon Royalty, sold half to F. O. Harrell, and the voucher notation shows that he sold the other half to Wichita Royalty. The two items, 30 and 31, aggregating $11,000.00 included the $1,500.00 item—that shows a total tracing of those funds, in Peckham's account of $10,993.75, I would not say that $6.25 was a shortage, because these figures do not include any of the expense which Mr. Peckham paid incidental to acquiring the property—there is an unexplained difference of $6.25. That is the last purchase of royalties set up in the complaint, but there are various other items on page .... which include all of the other allegations of misappropriation in the bill of complaint; both items represent a number of checks issued by the Wichita Royalty Company and are as follows: Nos. 1,294, 1,923, 9, 18, 51, 58, 86, 299, 303, 284, 285, 293, 344, 384a, 386, 406, and 408; these checks were issued on the respective dates as follows: April 14, 1923, April 13, 1923, June 7, 1923, July 6, 1923, August 15, 1923, September 1, 1923; October 20, 1923, November 17, 1924; November 29, 1924; October 22, 1924; October 23, 1924; November 7, 1924; February 18, 1925; June 19, 1925; June 24, 1925; August 8, 1925, and on August 24, 1925.

The respective checks were issued for the respective amounts as follows:

$10,000.00; $5,000.00; $10,308.34; $505.00; $15,000.00; $5,000.00; $5,000.00; $1,500.00; $1,528.89; $7,802.-
1711 50; $2,500.00; $2,000.00; $10,168.90; $8,122.67; $300.00; $10,000.00 and $4,867.78.

All of the above checks were payable to the City National Bank and the voucher notations supporting the issuance of these checks by the Wichita Royalty Company stated that they were to be applied on their indebtedness at the City National Bank, on notes held

by the City National Bank of the Royalty Company's and they were applied upon the interest due by the Royalty Company to the bank, in accordance with my exhibit 212a. Each of these checks were applied by the bank against the notes of the Wichita Royalty Company held by the bank and none of these checks entered into George Peckham's individual account, nor were any of these checks applied in any way upon Mr. Peckham's indebtedness—personal indebtedness—to the City National Bank.

That completes my analysis and investigation of all of the items representing alleged defaults set up in complainant's cross complaint, as well as various transfers that are not alleged as defaults in the account of the Wichita Royalty Company to Mr. Peckham; and completes the detail of the various transfers, checks and transactions between the Wichita Royalty Company and Mr. Peckham as its trustee from January 1, 1923 up to the date of Mr. Peckham's death—that is shown by Plaintiff's Exhibits 212 and 212a, which exhibits are an analysis of funds received by G. W. Peckham from the royalty company during that period of time.

1712 It is a correct analysis of the books and records of the Royalty Company, the bank, and the other interested parties.

Mr. Humphrey:

We offer these two exhibits in evidence.

(Marked "Plaintiff's Exhibits 212 and 212a as follows:)

PLAINTIFF'S EXHIBIT 212.

Application by G. W. Peckham of alleged trust funds from Wichita Royalty Co. October 8, 1925 to July 14, 1930.

P. H. LAMBERT & COMPANY,
Certified Public Accountants, Wichita Falls, Texas.

1713 Analysis of Application of Funds Alleged Received from Wichita Royalty Company by G. W. Peckham, October 8, 1925, to July 14, 1930.

Alleged Trust Funds Received.

Check No.	Date	Amount	Payee	Credit Given	Voucher Notation	Item Number	Page Number
427	10- 8-25	$5,500.00	Bank	Peckham	Purchase Royalties	1	1
451	12-28-25	1,250.00	Do.	Do.	Producing Royalties	2	1
452	1- 4-26	5,000.00	Peckham	Do.	Do.	3	2
458	1-11-26	5,000.00	Bank	Do.	Do.	4	2
461	1-18-26	15,769.07	Do.	Do.	Stephens Royalty	5	2
478	3- 6-26	17,623.70	Do.	Do.	Marlborough Purchase	6	3
479	3- 6-26	6,000.00	Sec. N. Bk.	(Do.)	Do.	7	3
485	3-31-26	7,500.00	Bank	Do.	Marlborough Improvements	8	4
495	4-23-26	300.00	Do.	Note	Interest to Bank	9	4
503	5-20-26	3,000.00	Peckham	Peckham	Marlborough Improvement	10	4
506	5-29-26	500.00	Bank	Note	Interest to Bank	11	5
507	5-29-26	1,500.00	Do.	Peckham	Marlborough Improvement	12	4
510	6-16-26	4,500.00	Do.	Do.	Do.	13	4
519	7-13-26	1,000.00	Do.	Do.	Do.	14	4
521	7-16-26	300.00	Do.	Note	Interest to Bank	15	5
525	8- 2-26	4,000.00	Do.	Peckham	Highland Note	16	5
531	8-27-26	500.00	Do.	Note	Interest to Bank	17	6

1477

Check No.	Date	Amount	Payee	Credit Given	Voucher Notation	Item Number	Page Number
532	8-27-26	4,357.58	Do.	Peckham	Highland Note	18	5
540	10-13-26	300.00	Do.	Note	Interest to Bank	19	7
550	11-20-26	7,500.00	Do.	Peckham	Purchase Royalties	21	14
554	12- 2-26	1,500.00	Do.	Do.	Royalties and Fee	22	14
556	12-22-26	700.00	Peckham	Highland	Highland Note	23	5
556A	12-22-26	538.16	Do.	Do.	Do	24	5
557	12- 7-26	1,920.00	Bank	Draft	Purchase Royalties	25	11
569	1-11-27	300.00	Do.	Note	Interest to Bank	26	12
571	1-19-27	2,000.00	Do.	Peckham	Marlborough Improvement	27	12
579	2-19-27	2,500.00	Do.	Do.	Do.	28	12
582	3- 1-27	500.00	Do.	Do.	Interest to Bank	29	13
583	3- 1-27	301.82	Do.	Do.	Purchase Royalties	30	14
584	3- 1-27	500.00	Do.	Note	Interest to Bank	31	13
591	3-23-27	2,000.00	Do.	Peckham	Purchase Royalties	32	15
599	4-14-27	300.00	Do.	Note	Interest to Bank	33	16
598-602	7-10-1927	3,000.00	B. L. Fain	Peckham	To Purchase Oil Runs	33A	8
615	6- 8-27	500.00	Bank	Note	Interest to Bank	34	16
620	6-18-27	1,200.00	Do.	Peckham	Note to Bank	35	17
628	7-16-27	1,500.00	Do.	Note	Interest to Bank	36	17
635	8-16-27	1,500.00	Do.	Peckham	Note to Bank	37	17
650	10-14-27	2,400.00	Do.	Do.	Do.	38	17
657	11-25-27	1,800.00	Do.	Do.	Interest to Bank	39	17

682	1-28-28	2,000.00	Do.	Note	Note to Bank	40	18
710	4-20-28	1,850.00	Do.	Peckham	Do.	41	17
717	5-17-28	220.00	Do.	Note	Interest to Bank	42	18
721	6- 1-28	424.66	Do.	Do.	Do.	43	18
733	7-23-28	220.00	Bank	Note	Interest to Bank	44	18
752	9-27-28	424.66	Do.	Peckham	Do.	45	17
768	12- 4-28	2,000.00	Do.	Note	Note to Bank	46	18
791	2-19-29	1,500.00	Do.	Do.	Do.	47	18
814	6- 7-29	1,500.00	Do.	Do.	Do.	48	18
824	7-15-29	212.49	Do.	Do.	Interest to Bank	49	18
836	8-30-29	1,000.00	Do.	Do.	Note to Bank	50	18
856	11-23-29	1,500.00	Do.	Do.	Do.	51	18
880	1-24-30	1,500.00	Marlboro	Tex. Inv. Co.	Loan	52	18
890	2-24-30	1,000.00	Bank	Note	Note to Bank	53	18
898	4-10-30	1,000.00	Do.	Do.	Do.	54	18
908	5-13-30	500.00	Tex. Inv. Co.	Tex. Inv. Co.	Note	55	18
920	6-14-30	1,500.00	Bank	Note	Note to Bank	56	18
930	7-14-30	3,055.42	Do.	Do.	Do.	57	18
–o–	1927-1928	6,000.00			Sale of Vaughn Royalty	58	19
–o–	1927-1928	6,000.00			Sale of Wilson Royalty	59	19

Item Number 1.

Amount	$5,500.00.
Property No. 81—Acquired by G. W. Peckham for the Wichita Royalty Company on October 19, 1925, for which Peckham paid Grantees' draft through the First National Bank in the sum of	$2,250.00
Plus Exchange	2.25
	$2,252.25
Revenue Stamps (10-23-25) on property No. 81	2.50
Commission Paid C. A. Rogers (10-26-25) on Property No. 81	225.00
Title Expense paid E. C. DeMontel (11-3-25)	
Do.	25.00
Property No. 82—Acquired by G. W. Peckham for the Wichita Royalty Company, for which property Peckham paid B. L. Fain on November 13, 1925, the sum of	1,500.00
(See Royalty Co. ck. No. 439 and 665.)	
Balance—The remainder of the above item was refunded to the Wichita Royalty Company by Peckham on November 10, 1925	1,500.00
Total benefit accruing to Wichita Royalty Company from the above item	$5,504.75
Less: Wichita Royalty Co. Check No. 438 ...	4.75
Balance	$5,500.00

Item Number 2.

Amount	$1,250.00.
Property No. 83—Acquired by G. W. Peckham for Wichita Royalty Company, for which	

property he paid to Knight and Hines the following sums:

On December 21, 1925	$1,200.00
On January 2, 1926	50.00
Total expended for benefit of Wichita Royalty Company account of the above item	$1,250.00

1716 Items Numbers 3, 4 and 5.

Number 3 Amount	$5,000.00
Number 4 Amount	5,000.00
Number 5 Amount	15,769.07
Total	$25,769.07

Property No. 84—Stephens Royalty acquired for the Wichita Royalty Company by G. W. Peckham and for which he paid to J. T. Harrell and C. E. Basham the following consideration:

Date.	Interest.	Principal.	Total Amount.
1-16-26		$2,201.32	$2,201.32
1-25-26	$28.00	10,000.00	10,028.00
3- 6-26	60.00	5,000.00	5,060.00
3-31-26	87.00	5,000.00	5,087.00
	Total Cash	$22,201.32	

Add: Curlee Land Cost (1-11-26)	$2,567.75	
Increase in value	1,000.00	
Sale Price of Curlee Land		$3,567.75
Consideration paid by G. W. Peckham		$25,769.07

1717 Items Numbers 6 and 7.

Amount $23,623.70

Marlborough Property: On March 6, 1926, G. W. Peckham acquired a 1/4 interest in this property from W. H. Peckham for a cash consideration of $11,811.85

To this 1/4th interest he added the 1/4 interest acquired originally by him from the Highland Irrigation Company under dates of September 19, 1925, and January 8, 1926, and transferred his entire 1/2 interest to the Wichita Royalty Company by deed dated (by the acknowledgment) April 10, 1926, for a consideration arrived at as follows:

Cost of 1/4 interest bought 3-12-26 $11,811.85

Value of 1/2 interest based on above cast $23,623.70

Note: Of the $23,623.70 paid to G. W. Peckham by the Wichita Royalty Company for this property $17,623.70 was deposited to his bank account at the City National Bank and the remaining $6,000.00 was deposited to his account in the Security National Bank.

1718 Item Number 8.

Amount $7,500.00

On April 15, 1926, from his account at the Security National Bank, G. W. Peckham paid to Marlborough Addition, the sum of this item amounting to $7,500.00

Item Number 9.

Amount $300.00

On April 23, 1926, this item was applied to pay the interest on Wichita Royalty Company Note No. 72690 amounting to $15,000.00 and held by the City National Bank, said interest, due and paid amounted to $300.00

Note: This item did not pass through Peckham's account in any manner.

Item Numbers 10, 12, 13 and 14.

Number 10 amounting	$3,000.00
Number 12 Amount	1,500.00
Number 13 Amount	4,500.00
Number 14 Amount	1,000.00
Total	$10,000.00

These funds received from the Wichita Royalty Company to pay their portion of Improvements in the Marlborough Addition, were applied by G. W. Peckham to said Wichita Royalty Company liability by the following payments made from his account to said Marlborough Addition:

Paid To.	Date.	Amount.
Marlborough Addition	5-20-26	$2,000.00
Marlborough Addition	6- 7-26	1,000.00
Marlborough Addition	6- 2-26	1,500.00
Marlborough Addition	6-19-26	4,500.00
Marlborough Addition	7-23-26	1,000.00
Total applied to Wichita Royalty Company liability		$10,000.00

1719 Item Number 11.

Amount $500.00

On June 2nd, 1926, this item was applied to pay the interest on Wichita Royalty Company Note No. 74590 amounting to $25,000.00, and held by the City National Bank, said interest due and paid, amounted to $500.00

Note:—This item in no manner passed through Peckham's account.

Item Number 15.

Amount $300.00

On July 17, 1926, this item was applied to pay the interest on Wichita Royalty Company Note No. 76878 amounting to $15,000.00, and held by the City National Bank. Said interest, due and paid, amounted to $300.00

Note: This item in no manner passed through the Peckham's account.

Items Numbers 16, 18, 23 and 24.

Number Amount 16	$4,000.00
Number Amount 18	4,357.58
Number Amount 23	700.00
Number 24 Amount	538.16
Total	$9,595.74

These funds received from the Wichita Royalty Company by G. W. Peckham to meet their maturing liability

on notes held by the Highland Irrigation Company, were applied on said notes as follows:

Payment to the Highland Irrigation Company from the account of G. W. Peckham on October 15, 1926, the sum of $9,595.74

(Peckham's check in evidence in first trial.)

1720 Item Number 17.

Amount $500.00

On August 30, 1926, this item was applied to pay the interest on Wichita Royalty Company Note No. 78450 amounting to $25,000.00, and held by the City National Bank. Said interest, due and paid, amounted to $500.00

Note: This item in no manner passed through Peckham's Accounts.

1721 Item Number 19.

Amount $300.00

On October 19, 1926, this item was applied to pay the interest on Wichita Royalty Company Note No. 80371 amounting to $15,000.00, and held by the City National Bank. Said interest, due and paid, amounted to $300.00

Note: This item in no manner passed through Peckham's accounts.

1722 Item Number 33A.

Amount $3,000.00

This item is made up of four checks issued by the Wichita Royalty Company and being as follows:

Date.	Number.	Payee.	Amount.
4-11-27	598	B. L. Fain	$ 500.00
4-23-27	602	B. L. Fain	1,000.00
5- 6-27	607	B. L. Fain	500.00
5-16-27	610	B. L. Fain	1,000.00
Total			$3,000.00

These checks were in payment for $4,200.00 of oil runs from certain lands situated in Wilbarger County, Texas. On April 15, 1927, B. L. Fain transferred said $4,200.00 of oil runs to Wichita Royalty Company by assignment and designated as Property No. 97 on records of said Company. (See Royalty Co. check #611.)

Of the above checks, all except No. 598 were indorsed by B. L. Fain to G. W. Peckham and deposited to Peckham's personal account.

Check Number 602 was deposited to Peckham's account on 4-23-27 and on the same date he issued his personal check to B. L. Fain for $1,000.00.

It is therefore evident that of the above amount G. W. Peckham received of B. L. Fain the sum of $1,500.00, and it is impossible for me to say whether this $1,500.00 represents Peckham's portion of the sale or a payment of money due Peckham by Fain on some deal or other obligation.

1723 Item Number 25.

Amount $1,920.00

Property No. 94: This property was acquired from Joseph M. Perkins of Eastland County, Texas. This

royalty was originally conveyed to G. W. Peckham by an instrument signed by the grantee, Perkins, on August 7, 1926, and acknowledged on September 29, 1926. G. W. Peckham conveyed the identical interest to the Wichita Royalty Company by an instrument signed by the said Peckham on August 7, 1926, and acknowledged by him on December 15th, 1926.

The consideration for this property was paid by the Wichita Royalty Company's check number 557, issued on December 7, 1926, payable to the City National Bank.

On December 15, 1926, this check was applied to pay a draft drawn for the consideration and coming through the Texas State Bank of Eastland, Texas, with deed attached and in the sum of (see Royalty Company Check Number 563) $1,920.00

(This item did not go into Peckham's bank account.)

1724 Item No. 26.

Amount $300.00

On January 15, 1927, this item was applied to pay the interest on Wichita Royalty Company Note 84218 amounting to $15,000.00, and held by the City National Bank. Said interest, due and paid, amounted to $300.00

Note:—This item in no manner passed through Peckham's accounts.

Items Numbers 27 and 28.

Number 27 Amount $2,000.00
Number 28 Amount 2,500.00

These checks on the Wichita Royalty Company were issued on 1-19-27 and 2-19-27, respectively and on those dates seem to have been deposited to G. W. Peckham's account. I am unable to find where Peckham applied same by payment to the Marlborough Addition, the alleged purpose of the checks. I am unable to determine whether or not Peckham was aware of their purpose or that they were deposited to his account, since I do not have the checks from which I may determine whether or not the indorsement is his.

1725 Items Number 29 and 31.

Number 29 Amount	$500.00
Number 31 Amount	500.00
Total	$1,000.00

On December 8, 1926, G. W. Peckham, from his personal account paid the City National Bank the interest due on Wichita Royalty Company Note Number 81992 for $25,000.00. Said interest due and paid amounted to	$500.00
On March 3, 1927, G. W. Peckham, applied item No. 31 direct and paid the City National Bank the interest due on Wichita Royalty Company Note Number 86209 for $25,000.00. Said interest due and paid amounted to	500.00
Total	$1,000.00

(Item Number 31 did not pass through Peckham's account.)

1726 Items Numbers 21, 22 and 30.

Number 21 Amount	$7,500.00
Number 22 Amount	1,500.00
Number 30 Amount	301.82
Total	$9,301.82

These items are alleged to have been given to G. W. Peckham for the following:

To Purchase Property No. 95	$5,000.00
To Purchase Property No. 96	3,000.00
To Purchase Property No. 93	160.00
To Pay Maturity on Porter Ranch Note	1,141.82
Total	$9,301.82

On December 2, 1926, G. W. Peckham paid to W. T. Knight the principal and interest due on December 1, 1926, on the Note held against the Wichita Royalty Company Property No. 83.

Principal	$920.83	
Interest	220.99	$1,141.82

On October 8, 1926, G. W. Peckham transferred to the Wichita Royalty Company their Property No. 93, for which, on November 9, 1926, he paid A. A. Beard the sum of (see Royalty Co. ck. No. 551) $160.00

Property No. 96 represents an interest in the SW 60 A of the E. Paulk lands, Archer County, Texas. The records do not reveal that this property was ever taken in either the name of Peckham or the Company. But on August 5, 1926, F. O. Harrell, with whom Peckham carried on extensive dealings, acquired a lease on this identical property. And on October 28, 1926, he acquired in his name a 1/4 of the royalty on the same tract.

Property No. 95 represents a 3/16 interest in the leasehold on the E 1/2 of Lot 10, North Anderson Ranch. The same situation prevails with this property as with the one above. Harrell, on February 1, 1927, acquired an interest in this identical property from the Sun Company.

1727 Item Number 32.

Amount $2,000.00

This item appears to have been deposited in G. W. Peckham's personal account on 3-23-27, the date the

check is alleged to have been drawn. As to its actual purpose, I am unable to determine whether it was issued for a property or to retire a Company liability. I do not have the check, and, therefore, am unable to compare the indorsement with Peckham's signature to determine, if possible, whether or not he made this deposit to his account.

1728 Item Number 33 and 34.

Number 33 Amount	$300.00
Number 34 Amount	500.00

On April 23, 1927, item Number 33 was applied to pay the interest on Wichita Royalty Company Note Number 87810 amounting to $15,000.00 and held by the City National Bank. Said interest, due and paid, amounted to $300.00

On June 8, 1927, item Number 34, was applied to pay the interest on Wichita Royalty Company Note Number 89764 amounting to $25,000.00 and held by the City National Bank. Said interest, due and paid, amounted to $500.00

Note:—In no manner did either of these items pass through Peckham's accounts.

1729 Item Number 36.

Amount $1,500.00

On July 16, 1927, this item was applied on Wichita Royalty Company Note Number 91730 amounting to $15,000.00 and held by the City National Bank:

To Pay Interest	$300.00	
To Apply on Principal	1,200.00	
Total		$1,500.00

Note: In no manner did this item pass through Peckham's accounts.

Items Numbers 35, 37, 38, 39, 41 and 45.

Number 35	6-18-27	Amount	$1,200.00
Number 37	8-16-27	Amount	1,500.00
Number 38	10-14-27	Amount	2,400.00
Number 39	11-25-27	Amount	1,800.00
Number 41	4-20-28	Amount	1,850.00
Number 45	9-27-28	Amount	424.66
Total			$9,174.66

Against these items G. W. Peckham paid from his personal account the following sums which were applied on the indebtedness of the Wichita Royalty Company to the City National Bank.

Date of Payment	Number of Note	Amount of Note	Amount Paid by Peckham Principal	Interest	Total
8-31-27	93429	$25,000.00	–o–	$500.00	$ 500.00
10-19-27	3347	13,800.00	$1,060.00	276.00	1,336.00
11-25-27	4558	25,000.00	1,000.00	500.00	1,500.00
2-15-28	7552	24,000.00	3,000.00	485.33	3,485.33
9-27-28	15381	21,000.00	–o–	424.66	424.66
Total Applied					$7,244.99

1730 Items Numbers 40, 2, 3, 4, 6, 7, 8, 9, 50, 1:

Number 40	Amount....	$2,000.00
Number 42	Amount....	220.00
Number 43	Amount....	424.66
Number 44	Amount....	220.00
Number 46	Amount....	2,000.00
Number 47	Amount....	1,500.00
Number 48	Amount....	1,500.00
Number 49	Amount....	212.49
Number 50	Amount....	1,000.00
Number 51	Amount....	1,500.00

These items were applied directly against the Wichita Royalty Company's indebtedness to the City National Bank upon the following dates and in the following manner:

Item Number (Above)	Date of Payment to Bank	On Note Number	Amount of Note	Application of Payment On Principal	On Interest	Total
40	1-28-28	6886	$12,740.00	$1,740.00	$260.00	$2,000.00
42	5-17-28	10636	11,000.00	–o–	220.00	220.00
43	6- 1-28	11167	21,000.00	–o–	424.66	424.66
44	7-23-28	13096	11,000.00	–o–	220.00	220.00
46	12- 4-28	17453	11,000.00	1,531.64	468.36	2,000.00
47	4-23-29	20232	9,468.36	1,287.51	212.49	1,500.00
48	6- 7-29	23631	21,000.00	350.65	1,149.35	1,500.00
49	6-15-29	24777	8,180.85	53.13	159.36	212.49
50	8-30-29	26135	29,194.63	399.39	600.61	1,000.00
51	11-23-29	26135	28,795.24	1,500.00	–o–	1,500.00

Note: None of these funds ever, in any manner, passed through the account of G. W. Peckham.

1731 Items Numbers 58 and 59.

Number 58 Amount	$6,000.00
Number 59 Amount	6,000.00
Total	$12,000.00

Item Number 58 represents the sale of the Vaughan Royalty which belonged to the Wichita Royalty Company. On February 15, 1928, G. W. Peckham deposited to his account the sale price of this property amounting to $6,000.00

Deduct—A 5% commission was paid on this sale by G. W. Peckham to White & Duncan on 2-16-28 300.00

Balance $5,700.00

Item Number 59 represents the sale of the Wilson Royalty which belonged to the Wichita Royalty Company. This property was sold in December, 1927, and the following amounts collected on the sale price were deposited to Peckham's account:

12-5-27	$2,400.00
1-9-28	1,200.00
1-25-28	1,224.00
2-29-28	1,224.00
Total Sale Price and Interest	$6,048.00

Less—5% commission paid on this sale by G. W. Peckham to W.C. Duncan on 12-6-27 ..... 300.00

Balance $5,748.00

1732

PLAINTIFF'S EXHIBIT 212a.

Application by G. W. Peckham of Alleged Trust Funds From Wichita Royalty Co. January 1, 1923, to October 8, 1925.

1733

Analysis of Application of Trust Funds Alleged to Have Been Received From Wichita Royalty Company by G. W. Peckham, January 1, 1923, to October 8, 1925.

Alleged Trust Funds Received.

Check No.	Date	Amount	Payee	Credit Given	Voucher Notation	Item Number	Page Number
1194	1-16-23	$1,040.00	Bank	Peckham	On Property #52 (McGaw)	1	1
1238	2-21-23	1,046.66	Do.	Do.	On Property 36-7-52	2	1
1281	4- 2-23	1,520.00	Do.	Do.	On Property #67	4	1
1282	4- 2-23	1,006.67	Do.	Do.	On Property #70	5	2
1291	4- 9-23	2,516.67	Peckham	Do.	On Property #71 (Grinshaw)	6	2
1294	4-14-23	10,000.00	Bank	Note	Borrowed Money	7	8
1293	4-13-23	5,000.00	Do.	Do.	Do.	8	8
1325	5-11-23	2,533.33	Peckham	Peckham	On Property #71	9	2
9	6-27-23	10,308.34	Bank	Note	To Pay Off Note	10	8
18	7- 6-23	505.00	Do.	Do.	Interest & Taxes	11	8
51	8-15-23	15,000.00	Do.	Do.	On Loan	12	8

1404

58	9- 1-23	5,000.00	Do.	Do.	Do.	13	8
86	10-20-23	5,000.00	Do.	Do.	Do.	14	8
299	11-17-24	1,500.00	Do.	Do.	Do.	15	8
303	11-29-24	1,528.89	Do.	Do.	Do. (Final)	16	8
147	1-19-24	5,000.00	Do.	Peckham	On Royalty Purchase	17	3
160	2- 9-24	2,500.00	Peckham	Do.	Option on Royalty	18	3
154	2- 2-24	12,000.00	B. L. Fain	Do.	On Royalty Purchase	19	3
169	2-29-24	1,200.00	Peckham	Do.	On Automobile	19A	4
185	3-18-24	9,250.00	Peckham	Do.	On Royalty (Wilson)	20	3
237	7- 2-24	11,000.00	Sec. N. Bk.	Do.	On L. 9 & 10 B41, White Lands	21	5
246	7-24-24	10,000.00	Do.	Do.	Do.	22	5
284	10-22-24	7,802.50	Bank	Note	On Loan	23	8
285	10-23-24	2,500.00	Do.	Do.	Do.	24	8
293	11- 7-24	2,000.00	Do.	Do.	Do.	25	8
317	12-23-24	695.00	Peckham	Peckham	On Property #78	26	6
344	2-18-25	10,168.90	Bank	Note	On Loan	27	8
373	5- 5-25	2,500.00	Peckham	Peckham	On Routan Property #79	28	7
384A	6-10-25	8,122.67	Bank	Note	On Loan	29	8
385	6-24-25	6,000.00	Peckham	Peckham	On Purchase of Properties	30	7
387	6-29-25	5,000.00	Do.	Do.	Do.	31	7
386	6-24-25	300.00	Bank	Note	Interest on Loan	32	8
406	8- 8-25	10,000.00	Do.	Do.	On Loan	33	8
408	8-24-25	4,867.78	Do.	Do.	Do.	34	8

Items Nos. 1 and 2.

Number 1 Amount $1,040.00
Number 2 Amount 1,046.66

These items were applied by G. W. Peckham, upon their receipt, against the Wichita Royalty Company's indebtedness incurred in the purchase of their Properties Nos. 36, 37 and 52.

Item Number 4.

Amount $1,520.00

This represents a maturing payment on Wichita Royalty Company Property No. 67 bought from B. L. Fain. Said funds were evidently used by G. W. Peckham to discharge this liability, since at no later date did the company again pay this particular maturity.

1735 Item Number 5.

Amount $1,006.67

This item received by G. W. Peckham on April 2, 1923, and on April 3, 1923, applied by him to pay Wichita Royalty Company obligation of $1,000.00 plus interest due on royalty purchased from W. H. Peckham per escrow agreement No. 1666.
Total applied $1,006.67

Items Number 6 and 9.

Number 6 Amount $2,516.67
Number 9 Amount 2,533.33

These items received by G. W. Peckham were applied by him to discharge Wichita Royalty Company obliga-

tion on royalty sold to them on March 12, 1923, under escrow agreement No. 1663:

Note Number 1 Due 4-12-23, plus 8% interest	$2,516.67
Note Number 2 Due 5-12-23, plus 8% interest	2,533.33

Total cost of Royalty No. 71 sold under above escrow agreement:

Cash Payment 3-10-23	$2,500.00	Paid to B. L. Fain
Due 30 Days at 8%	2,500.00	Paid above
Due 60 Days at 8%	2,500.00	Paid above

1736 Item Number 17.

Amount $5,000.00

This item received by G. W. Peckham on January 19, 1924, was returned to the Wichita Royalty Company on February 2, 1924, and deposited to their account on that date and in the amount of $5,000.00

Item Number 18.

Amount $2,500.00

This item was issued under date of February 9, 1924, to G. W. Peckham. On the same date and from his personal account he paid A. F. Bowden the sum of $2,500.00

Said payment being in part (option) for a 1/16 interest in 20 acres out of Lot 14, B. 27, A. T. N. C. Lands, Archer County, Texas.

Items Numbers 19 and 20.

Number 19 Amount	$12,000.00
Number 20 Amount	9,250.00
Total	$21,250.00

The above items received by G. W. Peckham on February 2, and March 17, 1924, respectively, were in payment for the Wilson Royalty conveyed by him to the Wichita Royalty Company under date of April 22, 1924. Designated Property No. 75 on Wichita Royalty Company records and costing them as follows:

Above Cash Consideration	$21,250.00
Assumption of Oil obligation to L. F. Wilson and running with the original grant	6,250.00
Total Cost to Wichita Royalty Co. of the 1/64th Royalty interest	$27,500.00

Other Sales made out of the Wilson Royalty and which Reflects its Market Value.

Sold To	Date	Escrow No.	Interest	Sale Price	Sale Unit Price
Wichita Royalty	3-17-24	—o—	4/32 of 1/8	$27,500.00	$6,875.00
United Royalty	4- 8-24	2095	3/32 of 1/8	27,000.00	9,000.00
King Royalty	3- 1-24	2097	1/32 of 1/8	8,500.00	8,500.00
Do.	3- 1-24	2096	2/32 of 1/8	20,000.00	10,000.00

These above items are shown only for the purpose of picturing the market price of the above royalty.

1737 Item Number 19A.

Amounting to $1,200.00

On February 29, 1924, G. W. Peckham received the above amount for a 1924 Studebaker Special Six. On September 30, 1926, two years and seven months after purchase, the Wichita Royalty Company sold this automobile for a cash consideration of .. $555.00

1738 Items Numbers 21 and 22.

Number 21 Amount $11,000.00
Number 22 Amount 10,000.00

The above items represent two Wichita Royalty Company checks drawn payable to the Security National Bank and purport to be for the purchase of an interest in Lots 9 and 10, Block 41, J. A. White Lands, and designated as Property No. 76 on Company's records.

This property shows, from the Wichita Royalty Company records, to have been sold in January, 1925, to or through B. L. Fain, from whom they received two payments aggregating $2,334.90.

On April 17, 1924, B. L. Fain acquired from A. W. Ross an undivided one-half interest in an oil and gas lease on the above lands. Said assignment being recorded in Book 88, Page 218 of the deed records of Archer County, Texas and in addition to a stated consideration of $10.00, it provided that the grantee, B. L. Fain, should drill a 1,700 foot well on said property, and as a further consideration for the lease, B. L. Fain agreed to pay A. W. Ross $2,500.00 out of 7/32 of the first oil produced. The oil obligation was paid and A. W. Ross released his lien by an instrument dated September 27, 1924, and recorded in Book 94, Page 92, of the above mentioned deed records.

Under date of December 15, 1924, B. L. Fain, together with the owners of the other one-half interest (C. W. Murchison, E. R. Fain, Ross Rovertson, J. I. Staley, and A. W. Ross), sold this lease together with all machinery and equipment to J. H. White for a stated consideration of $15,000.00, and on that date grantors conveyed their 7/8th working interest to J. H. White by conveyance recorded in Book 93, Page 392 of the deed records of Archer County, Texas.

It is evident that G. W. Peckham, from the checks paid from his personal account, acquired an interest in this lease as set out in Wichita Royalty Company's vouchers.

But I am unable to determine from Peckham's disbursements the exact cost at which Peckham acquired Wichita Royalty's interest in said lease. During the period in which this lease was held in the name of B. L. Fain, Peckham made numerous payments to Fain and to Murchison & Fain for the development and operating costs incurred on this property.

1739 Item Number 26.

Amount $695.00

This item was given to G. W. Peckham on December 23, 1924, to pay for a 1/16 of 1/8 royalty in 125 acres in Archer County, Texas. This royalty was conveyed to the Wichita Royalty Company on December 16, 1923, and designated their property No. 78.

1740 Item Number 28.

Amount $2,500.00

This item received by G. W. Peckham on May 5, 1925, was paid out by him on May 6, 1925, to Ray and Massie who, on June 30, 1925, conveyed a 1/16 royalty interest to the Wichita Royalty Company in the 117 acre tract designated property No. 79 on the records of said company. Peckham paid Ray and Massie $2,500.00

(See Royalty Company Check Number 448.)

Items Numbers 30 and 31.

Number 30 Amount	$6,000.00
Number 31 Amount	5,000.00
Total	$11,000.00

On the dates of July 1st and 20, 1925, G. W. Peckham conveyed to Wichita Royalty Company a 217 acres royalty interest. This property is designated as No. 80 on the records of said company. For these properties, conveyed on the above dates, G. W. Peckham on June 25, 1925, paid Murchison-Fain Oil Company, from his personal funds at the Security National Bank, the sum of $9,493.75

Under escrow agreement dated June 22, 1925, at the First National Bank, Olney, Texas, G. W. Peckham acquired an undivided 1/4 royalty in 20 acres; being the W. 1/2 of the SW 1/4 of N. W. 1/4 of J. Pointevent Survey, Section No. 2, Young County, Texas. Said royalty being acquired from G. W. Vernon for a consideration of $3,000.00

On June 30, 1925, G. W. Peckham transferred one-half of the above interest to F. O. Harrell. Cost of said one-half being ... $1,500.00

The remaining interest, being the undivided 1/8 royalty mentioned in Wichita Royalty Company checks 385 and 387, cost G. W. Peckham the sum of ..... $1,500.00 which does not include any expense incident to acquiring said interest.

Total application made for benefit of Wichita Royalty Company on the above items Nos. 30 and 31 (Plus expenses, if any) $10,993.75

Item Number	Amount
7	$10,000.00
1741 8	5,000.00
10	10,308.34

Item Number	Amount
11	505.00
12	15,000.00
13	5,000.00
14	5,000.00
15	1,500.00
16	1,528.89
23	7,802.50
24	2,500.00
25	2,000.00
27	10,168.90
29	8,122.67
32	300.00
33	10,000.00
34	4,867.78

All of the above items were payable to the City National Bank and, as directed, were applied as follows on Wichita Royalty Company notes payable held by the bank:

Item No.	Date of Payment	Note No.	Applied on Notes Principal	Interest	Total
7	4-14-23		$10,000.00		$10,000.00
8	4-13-23		5,000.00		5,000.00
10	6- 7-23		10,000.00	$308.34	10,308.34
11	7- 6-23	39883		505.00	505.00
12	8-15-23	39883	15,000.00		15,000.00
13	9- 1-23	39883	5,000.00		5,000.00
14	10-20-23	43226	5,000.00		5,000.00
15	11-17-24	55659	1,500.00		1,500.00
16	11-19-24	55669	1,500.00	28.89	1,528.89
23	10-22-24	52917	7,500.00	302.50	7,802.50
24	10-22-24	55659	2,500.00		2,500.00
25	11- 8-24	55659	2,000.00		2,000.00
27	2-18-25	56936	10,000.00	168.90	10,168.90
29	6-19-25	61784	8,000.00	122.67	8,122.67
32	6-24-25	64564		300.00	300.00
33	8- 8-25	64564	10,000.00		10,000.00
34	8-24-25	64564	4,867.78		4,867.78

None of these items ever passed in any manner through G. W. Peckham's Account.

1742 The Witness:

Respecting the items of purchase of certain royalties which I found in the name of F. O. Harrell, aggregating an expenditure of $8,000.00, I could find no payments made by Peckham and Harrell corresponding to the exact amounts. I did find transactions between Peckham and F. O. Harrell whereby Peckham had paid Harrell during this period of time substantial sums of money that were not identified; the first of those checks which were issued by the Royalty Company to acquire these properties; 95 and 96, was dated November 20, 1926, and the last one dated March 1, 1927. Between those two dates, I was only able to find two items. If I said this morning that I found numerous items or large sums, I was in error, but during the year 1926 and the year 1927, Mr. Peckham did make numerous payments to F. O. Harrell in considerable sums. But in the time elapsing between November 20 and March 11, I was only able to find one check from Peckham to F. O. Harrell, which is a check dated March 11, 1927 $500.00, and payable to F. O. Harrell, with the recitation "Balance of note on purchase of property."

Reverting back to the purchase of the Anderson Ranch and the Pointevant property whereby there is a difference in the expenditure and the tracing of the funds of $6.25 on the $11,000.00 item; these royalties that were purchased under those transactions were producing royalties or developing producing royalties. I made an analysis, the amount of royalties that the Wichita Royalty Company received from those properties was $10,174.51, being the north Anderson Ranch,
1743 Property No. 80. They had a deed to that property.

From my analysis there are certain transactions here that I did not have sufficient data, or were unable to account for, tracing of those funds from Mr. Peckham, from the Royalty Company into Mr. Peckham, and Mr. Peckham accounting for the same, among which was two items of $2,000.00 and $2,500.00, items 27 and 28.

In my report from October 8, 1925 to July 14, 1930, shown on page 1487. And the further item of $2,000.00 known as item 32, shown on page 1489. Items 58 and 59, the sale price of the Wilson Royalty and the Hattie Vaughan Royalty shown on page 1493 of that report, totaling $11,400.00. And the difference between the amount of payment made and Peckham deposited to his account, voucher notation on the note payable to the City National Bank and the amount actually spent by Peckham, that difference amounted to $1,929.67, I was unable to find. Those items which I have been unable to account for total $19,829.67. The difference between that and the ones Mr. Scannell made out and presented to the administrator in December, 1930, is $1.00.

The audit of Mr. Peckham's affairs were checked, but we could not classify the data as books; all that was available was a batch of checks, together with the bank statements which they happened to be in; a few of the bank statements from the Security National Bank, which we were able to find, and four or five statements from a bank in Olney, with which
1744 he did business and his deposit slips. We did not have all of the bank statements. He did business with the Security National Bank in Wichita Falls, City National Bank of Wichita Falls, Farmers State Bank of Olney, City National Bank of Olney, those were all we could find. We have six statements of the bank of Olney and three statements covering his entire account in the Security National Bank of Wichita Falls. We did have all of the books of the City National Bank reflecting Mr. Peckham's account both as to his liability and his deposits; also had, either copies of the original records of the Wichita Royalty Company, we had those. The Wichita Royalty Company kept a set of books, a complete set of records, well designed, a well designed system, sufficient to reflect at any and all times the condition of the company, the result of its operations, its assets and its liabilities, and the books are well kept. by an experienced and competent bookkeeper. The

books of the Wichita Royalty Company reflected each and all the transactions from 1923 to 1929, whereby the checks were issued and the funds passed from or to the Wichita Royalty Company. On the books of the Wichita Royalty Company there were check marks of different kinds, from 1923 to 1929.

The books of the Wichita Royalty Company reflect that they were engaged in the purchase of royalty interests. There was one journal missing of the Wichita Royalty Company books, and also one cash book, but Mr. Scannell has his cash received memorandum
1745 and his checks, from which can be made out this cash book in case it is needed. It would have helped if we had had the book, but it would have made it much easier if I had had the cash receipts memorandum supporting it; however, the life of that record did not render it impossible for me to make a correct analysis.

During this period of time I also found the notes George Peckham had paid Wichita Royalty Company various sums of money, in addition to those items set out in Plaintiff's Exhibits 212 and 212a, issued these checks (handing checks to counsel) to the Wichita Royalty Company. All of those checks are payable to the Wichita Royalty Company, drawn on G. W. Peckham's individual account and was paid out of that account and deposited to the account of Wichita Royalty Company, but I have not taken those into account in accounting for the transferred funds, or alleged transfer of funds from the Wichita Royalty Company to the account of G. W. Peckham. They would not throw any light on the transaction except to show that Mr. Peckham was turning over to the Royalty Company different moneys or royalties that came into his hands for the account of the Royalty Company.

Mr. Humphrey:

In this connection and with this testimony we offer in evidence this group of checks, marked "Plaintiff's Exhibit 214.

PLAINTIFF'S EXHIBIT 214.

(This being a series of checks drawn on City National Bank, City National Bank of Commerce or City National Bank of Wichita Falls, all being signed by G. W. Peckham, bearing proper indorsements, and showing for what checks were drawn, payable to Wichita Royalty Co.)

Date	Amount	Perforated	Teller	To Cover
8-14-23	2,356.74	8-14-23	8	Oil runs 1-4 to 7-15-23 on Eagle Pitcher sold by Fain to WRCo.
8-14-23	1,309.47	8-14-23	8	Oil runs 1-9 to 7-15-23 on 1/64 Eagle Pitcher sold by WHP to WRCo.
8-14-23	5,736.16	8-14-23	8	Oil runs 12-7-22 to 7-15-23 on 1/32 Ellis Holmes sold by WHP to WRCo.
8-14-23	1,309.47	8-14-23	8	Oil runs 1-9 to 7-15-23 on 1/64 Eagle Pitcher sold by Fain to WRCo.
1-16-23	855.54	1-18-23		Oil runs on 9 acres Hattie Vaughn.
3-17-23	500.00	3-19-23	8	Payment on 20 acres R..... Royalty
3- 7-23	500.00	3-16-23	8	On contr with Interstate Royalty.
10-16-24	45.00	10-20-24	7	Texhoma runs Wilson Royalty Co.
10-16-24	47.34	10-20-24	7	Texhoma runs WRC Sept. 1 to 15
10-16-24	54.37	10-20-24	7	Texhoma runs Wilson Roy last ½ August
9- 3-24	52.83	9- 9-24	8	Texhoma runs Staniforth runs first half August

Date	Amount	Perforated	Teller	To Cover
5-26-24	538.30	5-27-24	7	Panhandle runs R. M. F. lease last half April.
5-28-24	138.75	6- 3-24	8	Texhoma runs Staniforth lease last half of May
4-29-24	206.58	5- 7-24	8	Texhoma runs first ½ April Wilson Royalty
5-12-26	182.44	5-15-24	7	Texhoma runs ½ April Wilson Roy.
5- 2-24	480.04	5- 7-24	8	Panhandle runs last half April R. M. F. lease.
4-24-24	375.55	4-29-24	8	Panhandle runs R. M. F. lease last half of March
6-12-24	74.63	6-14-24	8	Texhoma runs last half May Wilson Royalty
11-12-24	47.08	11-13-24	8	Texhoma runs Wilson Roy 10-16 to 10-31.
10-28-24	39.05	11- 8-24	8	Texhoma runs Oct 1-15 Wilson roy.
12-13-24	33.23	12-16-24	7	Texhoma last ½ Nov. Wilson roy.
12-30-24	34.66	1-10-25	8	Texhoma runs Wilsoy roy. Dec. 1-15
1-13-25	52.27	1-16-25	8	Refund from McCray on Wilson roy.
1-13-25	31.04	1-16-25	8	Texhoma runs Dec. 16-31 Wilson roy.
11-28-24	36.03	11-29-24	8	Texhoma runs Nov. 1-15 Wilson roy.
12- 9-24	197.03	12-10-24	6	Texhoma storage Wilson royalty
3- 7-23	259.92	3-16-23	8	Hattie Vaughan collected 3-3-23
2-16-23	449.82	2-21-23	1	Oil runs 9 ac. Hattie Vaughan Collected 2-12-23
1-13-23	240.84	1-16-23	3	Oil runs (marked "P. Ex. 43")
6-28-24	55.64	7-18-24	8	1st half June runs Texhoma on Staniforth lease

7- 5-24	135.42	7- 9-24	8	Griswold runs Mch. and Apr. RMF lease
4- 9-24	141.38	4-16-24	8	Oil runs—Texhoma—on Staniforth lease first half March
4- 9-24	525.07	4-16-24	8	Oil runs Panhandle on RMF 1st half of March
9- 5-24	751.41	9- 9-24	8	Panhandle runs May and first three days June Wilson Royalty
9- 3-24	34.75	9- 9-24	8	Texhoma runs Staniforth lease last half July
7-23-24	40.04	8- 7-24	8	Texhoma runs last half June Wilson Royalty
7-31-24	35.78	8- 7-24	8	Texhoma 1st half July Wilson roy.
2- 6-24	14.15	2- 8-24	–	Gas on Ellis Holmes for Sept. 123.
4-15-24	184.54	4-16-24	8	Oil runs last ½ March Texhoma on Staniforth lease Archer Co.
8-15-23	199.22	8-12-23	8	Oil runs on 78(?) acres R. T. Eagle Pitcher 7-16 to 7-31-23
2-14-23	3,000.00	2-15-23	2	Payment on royalty sold to Harrell
2- 6-23	566.37	2-21-23	1	Oil runs on 4 ac. Hattie Vaughan collected 1-27-23
5-25-23	302.98	5-28-23	8	Oil runs on Grimshaw for April runs by Humble
5-15-23	234.05	5-16-23		Oil runs on Grimshaw March 12 to 3-23. (Marked "P. Ex. 158")

The Witness:

The check you now hand me, in addition to the twenty-two thousand, four hundred and six dollars, and fifty cents, one of the checks for $8,000.00 payable to the Wichita Royalty Company on August 14, 1923; cashier's check for $1,033.33 issued to G. W. Peckham on July 25, 1923, and $1,026.67 issued to the Wichita Royalty Company on June 29, 1923, were purchased with the individual funds of G. W. Peckham and deposited to the credit of the Wichita Royalty Company. I have the individual checks of G. W. Peckham that went to the

1749 purchase of those cashier's checks, and I now hand them to you.

Mr. Humphrey:

We offer these checks in connection with the cashier's checks Plaintiff's Exhibit No. 215.

PLAINTIFF'S EXHIBIT 215.

(Cashier's checks and corresponding checks of Peckham, G. W.) City National Bank No. 79528 Wichita Falls, Texas Aug 14 1923 Pay to the order of Wichita Royalty Company $8,800.30 Cashier's check (Signed) W. L. Robertson For Deposit Only, G. W. Peckham, as Trustee, Wichita Royalty Company. (Perforated) Paid 8-14-23

Wichita Falls, Texas 8-14-1923 No. .... "18" City National Bank of Commerce Pay to City Nat'l Bank or bearer $8,800.30 (Signed) G. W. Peckham (Perforated) Paid 8-14-23 No indorsements.

1750 Wichita Falls, Texas Jul 25, 1923 (Cashier's Check) No. 78885 Pay to the order of G. W. Peckham $1033.33 Cashiers' Check (Signed) O. Y. Jones (?) Vice President Cashier Ass't Cashier (Indorsed G. W. Peckham by E. E. Scannell For Deposit Only, G. W. Peckham as Trustee Wichita Royalty Co.

Wichita Falls, Texas 7-25-1923 No. ..... "18" City National Bank of Commerce Pay to City Nat'l Bank or bearer $1033.33 (Perforated) 7-25-23 No indorsements (Signed) G. W. Peckham

Cashier's Check City National Bank of Commerce No. 78021 Wichita Falls, Texas Jun 29, 1923 Pay to the order of Wichita Royalty Co. $1026.67 Cashier's Check (Signed) W. L. Robertson, Vice President For Deposit Only, G. W. Peckham, as Trustee, Wichita Royalty Co. (Perforated) Paid 6-29-23

Wichita Falls, Texas 6-29-1923 No. .... Check "18" City National Bank of Commerce Pay to City Nat'l Bank or bearer $1026.67 (Signed) G. W. Peckham Draft for Wichita Royalty on Harrell payment on Ellis Holman (rforated) Paid 6-2-23 No indorsements.

1751 The Witness:

The checks in Plaintiff's Exhibit 215 aggregate $10,860.30.

Cross Examination.

By Mr. Rogers:

I stated, that the Wichita Royalty Company's books were complete and well kept, by competent bookkeepers. It is not my testimony that any of these items which have now been identified and introduced in evidence as Plaintiff's Exhibits 214 and 215, have anything to do with a proper statement of the account between Wichita Royalty Company and G. W. Peckham, except in Mr. Scannell's testimony he stated that checks Nos. 46, 47, 48 and 49, issued by the Wichita Royalty Company on August 14, 1924, were deposited to G. W. Peckham's personal account; those checks were issued to B. L. Fain and W. H. Peckham to that extent and for that reason they are taking them into consideration. He included that in the total funds transferred from the

Wichita Royalty Company to G. W. Peckham on the same date G. W. Peckham put $19,512.14 back into the Royalty Company, the effect is that George Peckham returned that amount, where on the same day on which he was alleged to have received $15,000.00 and some odd dollars. The purpose of the introduction of these checks, Plaintiff's Exhibits 14 and 15, is that on that date George Peckham is alleged to have taken into his bank account by indirection, $15,033.81, and on the same day he returned to the Wichita Royalty Company $19,512.14—I merely set those up for what they are worth.

1752 The notations show he was returning—the check for $2,356.74 issued by George Peckham to the Wichita Royalty Company states in the left hand corner, "Oil runs, 1-9- to 7-15-23, on 9/320ths Eagle Pitcher, sold by Fain to the Wichita Royalty Company. On the same date, August 14, 1923, payable to the Wichita Royalty payable out of George Peckham's personal fund for $1,309.47, bears the explanation, "Oil runs January 9, to July 15, 1923, on 1/64th Eagle Pitcher, sold by W. H. P. to W. R. Co." On the same day G. W. Peckham issued his personal check to Wichita Royalty Company for $5,736.16, bearing the notation, "Oil runs, 12-7-22, to 7-15-23, on 1/32nd, Ellis Holmes, sold by W. H. P. to W. R. Co." On the same day G. W. Peckham issued to the Wichita Royalty Company a check on his personal account in the amount of $1,309.47, with the notation, "oil runs January 9, to July 15, 1923, on 1/64th, Eagle Pitcher, sold by Fain to W. R. Co." On the same day G. W. Peckham, with a check paid out of his personal funds, on deposit in the City National Bank, bought a cashier's check from the City National Bank, being cashier's check No. 79,528, for $8,800.30, and payable to the Wichita Royalty Company, which cashier's check was deposited in the Wichita Royalty Company's bank account at the City National Bank, making a total of checks and moneys which Peckham transferred out of his personal funds on deposit, City National Bank, to the Wichita Royalty Company, in the amount of $19,-

512.14. I did not go into all of these items until after the beginning of the taking of this testimony,
1753 and after Mr. Scannell testified that their checks Nos. 46, 47, 48 and 49, had been diverted to Mr. Peckham's personal account.

Re-Direct Examination.

By Mr. Humphrey:

I now turn to check for $2,500.00, shown on page 1736, of Plaintiff's Exhibit 212a, wherein I testified that voucher of the Wichita Royalty Company showed payment of $2,500.00 for an option for 1/16th interest in twenty acres of lot 14, block 27, American Tribune New Colony lands in Archer County, Texas; I supported that by a corresponding check from G. W. Peckham of $2,500.00, A. F. Bowden, since I gave my testimony I have secured the record and examined the original records of cash received by the Wichita Royalty Company as of February 16, 1924. I did not have that record at the time I made up that report. With reference to the return of this sum, $2,500.00, the original record of cash received, No. 58, being the original cash record of Wichita Royalty Company, shows that on February 16, 1924, they received from G. W. Peckham the sum of $2,500.00, with the explanation as follows: "Refund of option of 1/8 of Mayer-Staniforth, 20 acre lease, L. F. Wilson Lands, Archer County, Texas," and was deposited to the account of Wichita Royalty Company in the City National Bank on February 16, 1924; I know that from their original record of cash received, a copy of the deposit slip covering their deposit of funds on February 15, 1924.

1754 J. T. HARRELL, recalled, for further examination by Mr. Boone, testified as follows:

When I was on the stand the other day there was introduced in evidence Defendant's Exhibit 154, being

a check dated January 8, 1926, for $2,567.75, payable to the Curlee land and signed G. W. Peckham, and likewise, a similar check on the same date, Exhibit 155, and I was requested to find the difference between the amount of the deposits going to W. S. Curlee on January 8, 1926, which was $4,749.10 and this $5,135.50. After I left the witness stand I called Mr. Curlee to find out what became of the difference between those amounts —that was a matter of commission and the item of revenue. commission being paid to the agent who handled the sale, and the revenue of $5.00, went on the deed. The agents who received the commission were Kemp, Welch, and Richardson. After obtaining that information from Mr. Curlee, I got the deposit slip for the same date in the City National Bank of Welch, Richardson and Kemp on January 8, 1926, which shows $381.40 deposited to their account. That is the commission agents Mr. Curlee informed I obtained the commission from. In addition thereto I have examined the deed, Defendant's Exhibit 14, and there is $5.00 revenue stamps required on the deed.

The $381.42 and $5.00 is exactly, to the penny, the difference between $4,749.10 and the amount that Mr. Peckham and I paid, to-wit, $5,135.50.

1755 Mr. Boone:

I offer the deposit slip in evidence, in connection with Defendant's Exhibits 154 and 155, and it is agreed between Mr. Rogers and myself, as I understand it, that this will be sufficient, without bringing Mr. Curlee here to testify. Instrument marked Defendant's Exhibit 164.

DEFENDANT'S EXHIBIT 164.

City National Bank Deposited By Welch, Richardson & Kemp, Wichita Falls, 1-8-1926 Checks as follows: Harrell & Peckham $381.40 Original 3 Total $ "19"

The Witness:

Mr. Rogers asked me to bring my books that I kept for the year 1926, I don't know who kept these books but it is a transcript of my bank account, and all the books I kept during that time. I tender them to Mr. Rogers. This book consists of forty or fifty pages for the year 1926, I have never examined the books before Friday or Saturday of last week. After examining the books, I think I found a record of the Curlee check, it is listed by the bookkeeper under Curlee loan.

Mr. Boone:

I will ask that the check of that date be photostated, it is already introduced and I introduce it again, and ask that it be photostated, Defendant's Exhibit 165.

1756 DEFENDANT'S EXHIBIT 165.

Wichita Falls, Texas 1-8-1926 No. .... The City National Bank of Wichita Falls Pay to the order of Curlee Land $2567.75 (Signed) J. T. Harrell 1767.62 Perforated Paid 1-11-26

The Witness:

The amount charged for recording the warranty deed of Curlee to J. T. Harrell is $1.00, then I made additional payments on the outstanding indebtedne s of the Curlee land, and my bookkeeper placed that under real estate. On April 17, in the sum of $1,050.00, Curlee property, Harrell & Basham, Valley View Addition. I paid some additional expense to survey that land April 24, to E. S. Rest, Civil Engineer, $42.00. This book also reflects tne receipts that I obtained from the sale of the Stephens County Royalty, 1926, that is under recapitulation. The first payment in 1926, as reflected here is January 15, from Peckham, $535.69—no, it is $1,100.66, which is exactly one-half of the twenty two hundred and
1757 some odd dollars which Peckham gave on the second purchase of the Stephens Royalty. That

was put by my bookkeeper under the head of recapitulation. The next payment I received on the Stephens Royalty, January 25, one-half of $10,028.00. That shows on my books under the same heading, January 25, G. W. Peckham, $5,014.00. The next amount paid by me under the Stephens Royalty, February 2, shows under the same topic, Peckham note $50.00 interest, $2,550.00. Then in the month of March, my books reflect a note of $2,500.00, interest $30.00, making a total of $2,530.00 received from G. W. Peckham on March 6. On March 31, 1926, there was a check, which was put on my books April 1, showing on that date G. W. Peckham's credit of principal, $2,500.00 and $43.50 interest. That constitutes all of the payments that I received on the Stephens Royalty as reflected by my books during the year 1926.

I made an income tax return for 1926, it was made by Mr. Duncan. I have here the work sheets used by Mr. Duncan, which reflects a certain payment received from Mr. Peckham, in connection with the sale of the Vernon lease from which the notes were taken. These payments were properly 1925 income with the exception of interest on them received in 1926, which should be included in 1925. In re-checking that in filing the amended returns the notes were not dependent upon the oil—this work sheet No. C, I found that and it is the payment showing on page 1, the first one, sale lease in oil $1,100.66, under the title of income. The next is G. W. Peckham oil runs, Vernon Well, $5,014.00
1758 under the head of income. The next is the Peckham note, interest sale lease in oil 1925, $2,550.00, interest in income on work sheets. On page 2 of this work sheet, I find G. W. Peckham interest, $30.00, sale of oil in 1925, $2,530.00 under the head of income. Then in April it shows G. W. Peckham sale of oil in 1925, $2,500.00 interest $430.50 under the head of income. The work sheet here for 1926, as well as the carbon copy of the final report, shows the sale of royalty, the entire amount $7,500.00. I don't know whether that is correct or not, that is the records we found.

Re-Cross Examination.

By Mr. Rogers:

As I understand it from reading that comment at this time, as to whether it should have been income for 1925, it was a closed transaction, it was not oil runs. The income could have been the year in which the deal was closed, and therefore I could pay taxes on it for 1925, according to my memorandum. I cannot explain this, v thout having it checked, because I only got it yesterday. I do not remember selling Mr. Peckham $11.00 worth of property February 3, 1926, I don't know whether the $11.00 is for revenue stamps or not. I will try and look all of these matters up for you.

Mr. Rogers:

I offer in evidence the books of Mr. Harrell which reads as follows:

"February 3, G. W. Peckham, revenue stamps $11.00."

1759 The Witness:

That would indicate that on February 3, I gave G. W. Peckham a $11.00 check for revenue stamps. I will produce you the canceled checks if I can.

RAY F. BOMAR, a witness for the Plaintiff, being first duly sworn, examined in chief by Mr. Humphrey, testified as follows:

My name is Ray F. Bomar. I am in the banking business. Started in as a runner, filing clerk, bookkeeper and teller of the City National Bank. I was a teller in 1923, paying and receiving. During the years from 1923 to 1929, inclusive, the City National Bank had nine paying and receiving tellers. A paying and receiving teller receives deposits and cashes checks, receives money in the bank in the form of deposits, and

pays out money in the form of orders or checks drawn on the bank. In the payment of the checks, it is generally a rapid transaction. The note teller handles the loans and discounts. The note teller is not on the same side of the bank as the paying and receiving tellers in the City National Bank. It is a separate department. The paying and receiving tellers do not keep up with the amount of indebtedness that the depositor owes.

I knew G. W. Peckham during his lifetime, and received deposits from him as an employee of the City National Bank from 1923 up until the time of
1760 his death. I knew him reasonably well and knew his signature. I knew Mr. Peckham was trustee for the Wichita Royalty Company and Mr. Scannell was a representative of that company. The Wichita Royalty Company from 1923, up until the time George Peckham died, carried a bank account in the City National Bank. Mr. Scannell and Mr. Peckham both had authority to draw checks on that account. I know something of the nature of this lawsuit and have testified in this case before. I was the receiving and paying teller that received a great number of the checks which were transferred from the account of the Wichita Royalty Company to the account of George W. Peckham. I am teller No. 7. This check which you now hand me, drawn by the Wichita Royalty Company by E. E. Scannell, payable to G. W. Peckham for $500.00, that was handed to me and I gave Mr. Peckham credit for it, at his request. This is another one of the same date, and here is one for $400.00, I gave him credit for that also at Mr. Peckham's request. Here is a check dated 5-11-23, for $2,533.33, payable to George Peckham. I handled that transaction. I have verified all of these deposit slips from the tellers sheet. We have a sheet that shows the deposits we have received during the day and since this suit came up, I have taken those deposit slips and verified them with the teller that handled the deposit. I gave George Peckham credit for this check drawn in his favor by E. E. Scannell for $2,533.33.

both of these slips are in the handwriting of Mr. Peckham. Here is another one, I received that check,
1761 and gave Mr. Peckham credit for it, at his request. It is in his handwriting. Here is a check for $12,000.00, I received this deposit, that is Defendant's Exhibit 128, payable to the order of B. L. Fain, signed by the Wichita Royalty Company by E. E. Scannell for trustee. I gave Mr. Peckham credit for that item at his request, it bears the proper indorsement of B. L. Fain across the back of it. The deposit slip was made out by G. W. Peckham himself. All of these transfers were made at the request of Mr. Peckham, many times he made out the deposit slip himself. At the time I gave Mr. Peckham credit for these various items, they were all drawn and signed by a person authorized to sign their name, E. E. Scannell or Peckham, generally Mr. Scannell, and were payable either to the bank or Peckham or some other person who had indorsed them. At the time I made the transfers I know the general reputation of George Peckham for honesty and fair dealings in this city, and that was good. I had no knowledge of any intention on the part of Mr. Peckham, or any suspicion of any intention on his part to misuse or apply the funds at the time he had requested me to give him credit for these various items. At the time I made these transfers, I did not have time to look up and see what his balance was, nor did I undertake to do it. I did not look into his liability with the bank. I had nothing to do with the keeping of the books, as to his liability. It is not customary for a teller who receives money on deposit from a customer, to check
1762 up and see how much the customer owes the bank.

Here is a $6,000.00 check that is payable to G. W. Peckham, that was one I made out myself, check dated April 24, 1925, No. 385, I gave Mr. Peckham credit for that amount as shown on the deposit, slip, at his request. Mr. Peckham would bring these checks to me and ask me for individual credit and I would give

it to him. It would be hard to estimate as to how many items a teller handled in a day, that is all we did, was to handle deposits from the time the bank opened until it closed, and there were hundreds of them.

Cross Examination.

By Mr. Rogers:

During the period of time inquired about by Mr. Humphrey, each paying and receiving teller had a group of letters, being the beginning letter of the surname of the patrons of the bank, that came to the window. The patrons I served were under the names to begin with P, and as a general rule a customer of the bank whose name begun with P would come to my window. I knew during this period of time that the Wichita Royalty Company carried a bank account in its own name, against which checks were drawn by W. G. Peckham as trustee, or E. E. Scannell for the trustee. Likewise, I knew that G. W. Peckham, as an individual carried his account there to his own name. I knew that from time to time I took deposits, that Mr. Peckham was transferring funds from the Wichita Royalty Company to his personal account; I did not make any inquiry or any

1763 investigation of any kind or character as to why Mr. Peckham was transferring those funds. I could not say that I am familiar with the signature of B. L. Fain, I don't remember whether I was at that time or not. I do not know whether this is the indorsement on Defendant's Exhibit 138 or not, the deposit slip behind it is in the original handwriting of G. W. Peckham. That check was charged against the Wichita Royalty Company's account and deposited to Mr. Peckham's personal account. I do not know whether this is the indorsement of B. L. Fain on Wichita Royalty Company's check No. 1,252, payable to B. L. Fain or not, it is not in the handwriting as the man who wrote the name B. L. Fain. The paying and receiving tellers ascertain whether

or not an account is sufficient to pay an item presented by looking it up on the books. We never made any special effort to keep up with the deposit books and accounts of various persons whom we served, we did make an effort to ascertain from time to time whether or not a deposit account was sufficient in itself to stand a charge in the amount of a check or checks that were presented for payment. When Mr. Peckham would request the transfer of funds from the Wichita Royalty Company account to his own, I would honor his deposit request; as against our deposit in his personal account, I would honor such checks payable to third parties in such amounts as Mr. Peckham, or the payees of these checks, might present for payment. I did not undertake to make any investigation as to whether Mr.

Peckham was transferring these funds from one
1764 account to the other.

Re-Direct Examination.

By Mr. Humphrey:

These checks show to be voucher checks, they are perforated. Many institutions handle their business on voucher check systems. The vouchers are sometimes detached when the checks are handed to us for deposit. Supposing at the time Mr. Peckham transferred this $6,000.00 on the check of the Wichita Royalty Company dated June 4, 1925, and payable to the order of G. W. Peckham, at the time I gave him credit for it, the Wichita Royalty Company did not have $6,000.00 in its deposit balance, I ordinarily would not look up that check, as his deposit balance, at the time the check was given to me to determine the amount of his deposit balance, however, I would know in a general way what customers checks were good. If this check was not good, then that check would be cut back at the close of business that day, because that is when all the items were sent back—that is the final payment. If at the

close of business on June 24, 1925, it is shown that the Wichita Royalty Company's check was not good, I would charge Peckham's account back with this check. We did not make as careful an examination of the deposit balance of the drawers of the check, where they went to the credit of some other depositor in our bank, as we would if we were getting cash on it.

You now hand me a group of deposit slips, which it has been agreed were deposited to the credit of G. W. Peckham upon checks drawn upon the de-
1765 posit account of Wichita Royalty Company, signed by the trustee or E. E. Scannell for the trustee, and deposited to the credit of G. W. Peckham or some other person who indorsed the same—twenty-two deposit slips, showing from March 1, 1923, up into 1925, and 1926, and 1927 and 1928, taken by the tellers who are not now employed by the City National Bank. I can identify twelve of these deposit slips, out of the twenty-one, that are in the handwriting of G. W. Peckham, the remainder of them, I should judge, are in the handwriting of the tellers who received them.

Re-Cross Examination.

By Mr. Rogers:

Of those twelve in the handwriting of G. W. Peckham, seven of them are salary in the amount of $500.00, or $400.00. A few of them were written by me. I will say that with respect to the cashing of checks drawn upon the Wichita Royalty Company account, and with respect to the charging of checks to his personal account when drawn upon it, or with respect to the deposit of Wichita Royalty Company's money into his account, or his money into the Wichita Royalty Company account, I did not question G. W. Peckham but followed his instructions and made no inquiry as to why he was doing it.

Re-Direct Examination.

By Mr. Humphrey:

As far as I knew, Mr. Peckham was the sole trustee of the Wichita Royalty Company, I knew of no
1766 person who had any authority over him, and knew of nobody to go to if I wanted to question it, except Mr. Peckham. I never asked George Peckham if he was fixing to steal any money when he made a deposit.

Re-Direct Examination.

By Mr. Morrow:

Back in 1923, to 1929, inclusive, there were many people and concerns in Wichita Falls, that had what is known as the voucher form of remittances. If they were perforated, they were always detached before they were deposited.

Re-Cross Examination.

By Mr. Rogers:

All of the Royalty Company's checks presented to me for deposit to Peckham's account show at the top to be perforated, which ordinarily would mean that it was a voucher check, I never paid any attention to them. I have never read one of those notations on the back of a check, above the signature of the payee. I imagine I saw that notation, but I don't remember it. I did not ask Mr. Peckham what was written on the vouchers in his office.

Re-Direct Examination.

By Mr. Humphrey:

The tellers each had alphabetical letters over their windows but it was not compulsory, frequently a teller with the letter H, a customer whose name begins with

H would go to another window, the letter was
1767 placed there for the accommodation of the public.

Re-Direct Examination.

By Mr. Boone:

I testified with reference to Defendant's Exhibit 138, for $12,000.00, payable to B. L. Fain, I gave Mr. Peckham credit for it at his request. I don't know whether that is the signature of B. L. Fain or G. W. Peckham. Where a check was payable to a certain person and a man of integrity and outstanding honesty of G. W. Peckham, I never questioned the prior indorsement on it. There was nothing to lead me to believe that George Peckham was having checks forged, or that the payee's names were being forged on any bank—I have absolute confidence in George Peckham. Whenever those checks were presented, whether they bore the actual signature of B. L. Fain or not, or whoever they may have been, they were returned to the Wichita Royalty Company each month. I never heard of the Wichita Royalty Company, or anyone connected with that company, after this check was paid by the bank on February 2, 1924, or any other check payable, being questioned by the Wichita Royalty Company or anyone connected with it, until long after the death of George Peckham. If this signature was not the correct signature of B. L. Fain the Wichita Royalty Company never made any objection hereto. Whoever wrote the name of B. L. Fain on there, I don't know whether they had the authority or not. The same testimony applies to each and every check where there is a prior indorsement of G. W. Peckham.

1768 Re-Cross Examination.

By Mr. Rogers:

B. L. Fain still lives in Wichita Falls, as far as I know, I don't know whether he is living here now or

not. G. W. Peckham lived here and lived here all the time as far as I knew.

Agreement: Mr. Boone:

It is admitted that E. E. Scannell wrote the name of B. L. Fain on the back of the check I have just asked about, to-wit, No. 138.

It is agreed that the testimony of each of the paying and receiving tellers who handled these various items complained of would be the same as Mr. Bomar's testimony, as to the items handled by each of said tellers.

P. H. LAMBERT, recalled for further cross examination by Mr. Rogers, testified as follows:

I am a member of the Wichita Falls Bar, have been licensed as an attorney under the laws of the State of Texas since 1928, two years after I qualified as a Certified Public Accountant. Since October 15, I have worked seventy days on this matter, the reasonable and usual and customary compensation for work of that character in this vicinity at that time is approximately $25.00 per day. I expect to be paid reasonable com-
1769 pensation and have been paid $400.00. It has been a difficult task to run down the facts in this case, however, I have tried to avoid basing the figures I submit upon any assumption. I have tried to avoid basing my conclusions upon assumptions, just out of thin air, without something back of it. I have tried to determine what happened, and I have had to piece together the pieces in order to know what the pattern was with reference to what happened. I have had to go to the deed records and private offices not involved in this lawsuit. I have talked to a few witnesses. I have not talked to B. L. Fain, I know he lives here. W. H. Peckham lives here, I have not talked to him. I don't know where F. O. Harrell lives, it is my information that he lives in Oklahoma City. The books and records of J. T. Harrell have been available, his bank account

in particular, his liability ledger. I have examined his canceled checks as they pertained to the items brought up here in this trial. There were some of his canceled checks missing. We looked through the vaults in the City National Bank and in his office, and through the storage file. I remember particularly 1926 bank statements at the time we were searching for them. We thought contained the check which he paid for the Curlee land, that is how I happened to know that the 1926 checks were not available, could not be found. We found the Curlee checks down under a leaf in a black book which you asked for. I have not read the declaration of trust in this record, except as you mentioned it, I imagine it contains the provisions that the title is required
1770 to be acquired by the trustee, to be held in his name for the trustee. I think there are between four and seven properties altogether that did not stand in either the name of G. W. Peckham trustee or in Wichita Royalty Company—the deed records did not show they were in the name of either of them; some of the properties described as trust properties upon the books, by checks, issued and charged against the royalty company, stand in the names of other people, for example, F. O. Harrell and B. L. Fain. The records indicate that B. L. Fain and G. W. Peckham were closely associated in various deals. Such transactions as I find have been had between G. W. Peckham either individually or as trustee, with the Tolowa or the Wotola Companies were handled between B. L. Fain and G. W. Peckham, as to B. L. Fain's position, I do not know. Some of these properties stood in the name of G. W. Peckham. As to whether the Stephens Royalty stood in the name of J. T. Harrell and C. E. Basham for a period of time after G. W. Peckham had obtained $5,000.00 from the Royalty Company, I do not know. The instrument was dated January 1, and signed by Mr. Harrell, I don't know what date he signed it, he might have signed it on January 1, and his acknowledgment taken on January 24. In that case the title did not stand in his name. I could

not say whether Mr. Harrell executed the deed on January 1, or January 28, but the instrument is dated January 1, and the Wichita Royalty Company received the oil runs from the Stephens Royalty from January 1.

1771 I have been unable to find any contract in writing of any kind or character between the Wichita Royalty Company or between G. W. Peckham as purchasers on the one hand and J. T. Harrell and C. E. Basham on the other, concerning the purchase and sale, either the first or second sale. I have looked into the escrow files of the bank to determine whether or not there was an escrow on it, and I found none. They kept a record in a permanently bound book and I can determine definitely the escrow agreements in the bank from time to time. All I asked for with reference to Mr. Harrell's records was his liability account, his deposit accounts, and those things which dealt with the items as set up in the cross complaint. I knew Mr. Duncan in his lifetime, he is now dead. He was not a certified public accountant. He was a competent bookkeeper. I never saw that book we had here yesterday, in my life before. It is some loose leaf pages, that is the first time I ever saw it, was yesterday. I was sitting at the other end of the table and I didn't look at it. I suppose I did not ask Mr. Harrell for it, I didn't need it and didn't need to delve into his personal business to cover the items on that in full which were set out in the cross complaint.

As to the profits G. W. Peckham made on the various transactions between B. L. Fain and his associations, or with reference to any of these other properties as shown upon the trust books, you cannot tell. I believe I can tell whether he made a profit or loss, but as to making a

1772 definite statement as to the amount of that profit or the amount of that loss, it cannot be done. I don't think it can be done with the books Mr. Peckham had. He didn't have any books, he had checks and deposit slips. As to the amount which he owed Mr. Harrell or Mr. Harrell owed him, or the amount

B. L. Fain owed him, you could tell from his books. From any other source you could not determine the indebtedness of the other. Where they bought a bunch of property together and sold it out, as to how much profit belonged to one or the other, you could not tell from Mr. Peckham's records or any other records I examined, and I have examined all the records I could find. In seeking out the facts as I found them, where I placed them together, I endeavored to arrive at what appeared to be a correct result as to a fact. I have worked painstakingly and sought to unravel this conflicting amount of figures, and have worked sometimes until 2:00 o'clock in the morning and of course it is possible that some of my conclusions may be wrong in point of fact. I don't believe you can tell with prevision and accuracy the extent of profits that G. W. Peckham made in these various deals.

Mr. Rogers:

We now offer in evidence and ask that it be photostated, and that it be enlarged in the photostating process, if possible, the $2,500.00 check heretofore offered in evidence, payable to the order of Ray and Massie, and shows to have been paid by its perforation on or about May 6, 1925, DEFENDANT'S EXHIBIT 166:

(Exhibit 166 is the same as Plaintiff's Exhibit No. 173)

1773 The Witness:

I know Clifford Moores, he was engaged in the oil business here in 1925, and 1926. The Wichita Royalty Company did not have an oil and gas lease on the Routan land, they had a royalty on that land, which was conveyed to them by Ray and Massie. The only payment by G. W. Peckham from his personal account or otherwise, to Ray and Massie for that conveyance to the Wichita Royalty Company, that I can find, was the $2,500.00 check I have just mentioned, which was asked to be photostated Defendant's Exhibit 166, which has heretofore been of-

fered in evidence. The notation on it, "one-half, Allen Moran deal, Routan land." Mr. Peckham did not write a very legible hand, and I might be mistaken in reading the word "Moran." And I could be mistaken in reading the word "deal." The word "Moran" could be "Moore's." I cannot find anything that G. W. Peckham paid Ray and Massie for that conveyance, unless the $2,500.00 check which he gave Ray and Massie on May 5, was in payment of that Routan Royalty which they conveyed to the Wichita Royalty Company, I cannot find where he paid Ray and Massie for that royalty on that date by any other means—I did not run through all of the checks. The Wichita Royalty Company on that date gave this $2,500.00 check which Peckham deposited to his personal account, and that day he gave this $2,500.00 personal check that bears the notation of one-half interest in something. I do not remember what bank Ray and Massie deposited that $2,500.00 check in, but it was indorsed on the back, "For deposit, Ray and Massie."

1774 It is true that by an instrument dated March 22, 1923, filed for record April 14, 1923, and recorded in Volume 75, page 489 of the deed records of Archer County, Texas, J. R. Routan and wife, Sadie Routan, executed an oil and gas lease to J. H. James, conveying one hundred acres of land in Archer County, Texas, being a part of the Isaac Holman Survey and better described as one hundred acres off of the entire north side of block No. 9, of the Crawford pasture, as per plat of record in Archer County, Texas, containing one hundred acres, being an oil and gas lease for the primary term of five years providing for the usual royalties being what is known as a commercial lease, with a one dollar rental per acre. And Mr. James and his wife, on October 20, 1925, by instrument filed October 22, 1925, and recorded in Volume 106, Page 640, of the deed records of Archer County, Texas, assigned R. S. Allen and J. C. Strauss, said oil and gas lease in so far as it covered an undivided fifteen acre interest theretofore assigned to Mrs. Y. E. James by J. H. James.

Then by instrument of assignment dated May 2, 1925, filed for record May 8, 1925, and recorded in volume 99, page 579 of the deed records of Archer County, Texas Clifford Moores, J. C. Strauss, and Recess Allen, assigned to George B. Ray and J. H. Massie, said leasehold estate in so far as it covers the south forty acres of the original one hundred acre lease; and which assignment contains this paragraph, "It being expressly understood and agreed as a part of the consideration for the execution
1775 by assignors of this instrument and that the assignee expressly agreed that assignors do retain a one-eighth carried interest in the lease herein conveyed, that is to say, that assignors will first reimburse themselves for all necessary sums expended in drilling and developing said lease, after which assignors are to receive one-eighth of the assignees' seven-eighths total production to the land or lease on which is here assigned."

I have before me two checks, additional to May 5, 1925, $2,500.00 check by G. W. Peckham to the order of Ray and Massie, and check for $492.90, and one for $1.92.

Mr. Rogers:
I offer the checks in evidence.

DEFENDANT'S EXHIBIT 167 & 168.

Wichita Falls, Texas 9-23-1925 No. .... The City National Bank of Wichita Falls Pay to the order of Ray and Massie $1.92 Bill in full Routon Well 1 Dry hole (Signed) G. W. Peckham Pay to the Order of Security Nat'l Bank Ray & Massie By Butler (Perforated) Paid 9-25-25 "2"

Wichita Falls, Texas 6-26-1925 No. .... The City National Bank of Wichita Falls Pay to the order of Ray and Massie $492.90 1/12 of expense Routon Well No. 1, Dry Hole. (Signed) G. W. Peckham (Indorsed) pay to the Order of Security National Bank Ray & Massie (Perforated) Paid 6-29-25 "3" By Butler.

1776 The Witness:
The check you now hand me for $30,000.00 from Ray and Massie to Strauss, Allen and Mooers, dated May 2, 1925, seems to be the sum they paid for the forty acre Routan lease.

Mr. Rogers:
We offer the instrument in evidence and ask that it be photostated.

DEFENDANT'S EXHIBIT 169.

(Check) Wichita Falls, Texas 5-2-1925 No. 359 The Security National Bank Pay to the order of J. C. Strauss Reese S. Allen & Cliff Mooers $30,000.00 40 acres lse Ray & Massie J. B. Routon land Archer Co., Texas, By Geo. B. Ray.

1777 The Witness:
1/12th of that $30,000.00 would be $2,500.00. The check paid Ray and Massie on May 5, 1925, was for $2,500.00, and bore on it a 1/12 interest in the same deal.

These deposit slips which you now hand me, show on their face that that money was received for a 1/12 interest in the Routan well, cost and deed. And these checks for $2,500.00, $492.90, and $1.92, were deposited as evidenced by the deposit slips in the Security National Bank to the credit of Ray and Massie.

Mr. Rogers:
We offer the deposit slips in evidence, DEFENDANT'S EXHIBIT 170.

Deposited in The Security National Bank, Wichita Falls, Texas, By Ray & Massie 9-24-25, Checks as follows:

G. W. Peckham bal in full on Routon Well No. 1 (Dry hole)	1.92
Dale Oil & Ref. Co. oil runs Bond lse 1365.54 @ 1.95	2,662.80
By Ryan "7"	2,664.72

Deposited in The Security National Bank, Wichita Falls, Texas by Ray & Massie 6-27-25 Checks as follows:

Geo W. Peckham 1/2 of exp on Routon Well No. 1 dry hole	$492.90
By EP "Entered 66 Journal" Total	$492.90

1778 Deposited in The Security National Bank, Wichita Falls, Texas By Ray & Massie 5-5-25 Checks as follows:

Muse & Robertson 3/12 int. Routan Lse	7,500.00
G. W. Peckham 1/12 int. in Routan Lease	2,500.00
(47) By Ryan	10,000.00

1779 The Witness:

Nevertheless, Judge Rogers, on that date Ray and Massie executed that royalty deed and delivered it to the Royalty Company. The one that was covering the property that they specified in the check, they issued to George Peckham. As shown by my report, on the same day, $2,500.00 went into Mr. Peckham's account, the same amount went out to Ray and Massie in payment of the interest which Ray and Massie conveyed to the Wichita Royalty Company, George Peckham was then paying for his own interest in the lease, and not a royalty interest. If the check is not in payment for that royalty,

I don't know whether George Peckham paid Ray and Massie $10,000.00 for the interest they conveyed to the Royalty Company or whether he paid them $2,500.00. If Ray and Massie made a conveyance they got their money for it. I do not think the original deed from the Royalty owners recited that G. W. Peckham was one of the grantees, he might be possibly one of the undisclosed owners, because I have found him showing up in instruments without any record title himself. This instrument which you now show me, indicates that G. W. Peckham had a 1/12 interest in the lease and well, it is from the office of Ray and Massie, an expense account incident to the drilling of the well. His check, Defendan''s Exhibit 168, for $492.90, expressly says that his 1/12th interest Routan Well No. 1, Dry hole.

Mr. Rogers:

We offer the instrument in evidence, Defendant's Exhibit 171.

DEFENDANT'S EXHIBIT 171.

Ray & Massie Expense Account.

Routon Well #1 (Dry Hole.)

Date	Ck. No.	Name	Item	Amount
5-22-25	509	Gray Brothers	Building derrick	$ 136.68
5-30-25	523	K-M-A Fuel Oil Co.	Fuel oil	453.80
6- 8-25	601	K-M-A Fuel Oil Co.	Fuel Oil	144.00
6-11-25	591	Clifford Mooers	Water 18 days	270.00
6-15-25	613	Clifford Mooers	Slush pit & thribble boards	52.50
6- 8-25	590	Clifford Mooers	Drilling well 1370 ft.	2,975.00
5-30-25	525	Butler & Gragg	Casing 1285.2" ft.	1,060.25
5-16-25	457	E. R. Smith	Labor	100.00
5-30-25	450	J. J. Eagan	Hauling derrick	48.00
5-30-25	488	S. C. Seagraves	Hauling pump	8.00
5-30-25	490	C. D. Shamburger	Derrick pattern	401.81
6-10-25	527	E. R. Smyth	Labor	50.00
6- 1-25	618	Independent Torpedo Co.	Shooting casing	146.00
6- 1-25	560	H. Davenport	Hauling casing	37.50
6- 1-25	656	Producers Supply Co.	Invoices #42255 #42111 Casing shoe and 2 casing nipples and 2 casing couplings	31.25
				$5,914.79

1534

Muse and Robertson	3/12th	1,478.70
George Peckham	1/12th	492.90
Ray & Massie	8/12	3,943.19
		5,914.70

1781 The Witness:

I do not remember seeing any notation in the black book, kept by Mr. Peckham, in his own handwriting, in respect to the Allen, Moores, Strauss transaction, and I looked through that thing numerous times, and on different occasions, of course, I could have missed it, because he would write one year in the back and then one or two years in the middle and scratch all over it. I have found no instrument in writing, other than the conveyances themselves, all the instruments taken into consideration as a whole, that shows that the Curlee tract was a part of the consideration for the conveyance of Stephens Royalty to the Wichita Royalty Company—by those instruments I mean the deed from Peckham to Harrell and Basham and deed from Harrell and Basham to Wichita Royalty Company, the revenue stamps, and the deed from Peckham to the Royalty Company, the checks and deposit slips evidencing the consideration. I have considered the revenue stamps only to verify the amount of consideration, not to establish it—I do not think I have attached undue significance to revenue stamps. The 1926 bank statement of Mr. Harrell could not be found, therefore, I do not have the check of J. T. Harrell for $11.00, dated February 3, 1926, shown upon Mr. Harrell's books to be in payment to Peckham for revenue stamps. I have never looked for that check. The check I was looking for in January, 1926, was drawn in payment of the Curlee land.

1782 It Is Agreed that the $11.00 shown paid by J. T. Harrell to G. W. Peckham on February 3, 1926, was the amount of money that George Peckham collected off of Mr. Harrell for his one-half of the revenue stamps

going to and on the deed from Harrell & Basham to the Wichita Royalty Company, known as the second deal in the Stephens royalty.

The Witness:

I have not found anything in G. W. Peckham's books, bank statement, canceled checks or otherwise, where he paid for revenue stamps to be put on the Stephens Royalty about that time. $22.00 would be the proper amount of revenue stamps for $22,000.00. At eight percent interest it would take $22,000.00 one month and eleven days to earn $200.44, the time to earn $201.32, would lie between one month and eleven days and one month and twelve days. In my schedule I list that $201.32 as principal, because the notation on G. W. Peckham's check and the deposit slip, showing where Mr. Harrell and Mr. Basham took that money into their respective accounts.

The books which you exhibit to me, kept by Mr. Harrell is a loose leaf book, kept on the typewriter. The first item in this Stephens Royalty deal appears on January 8, in Mr. Harrell's as a payment of $2,567.75, which shows, Curlee loan. That item is listed under the general classification of Bills receivable. On Mr. Harrell's books he has the Curlee item listed as an asset at $2,567.75. He does not have the purchase price listed. This book of Mr. Harrell's appears to be a statement of his cash receipts and disbursements for the entire year, it is not a complete set of books kept in bookkeeping form. That is the only record Mr. Harrell has that I know of. Mr. Peckham did not keep a complete set of books, but if he had had a book like this it would have been much easier to tell what he did, there is no explanation on many of the items in Mr. Peckham's books. The Wichita Royalty Company kept a good set of books, they tied into each other and balanced.

1783

I find here Mr. Harrell's book on January 9, he paid the county clerk of Wichita County $1.00 for filing warranty deed to the Curlee land, shown under recording fees. On January 15, he shows to have received from Peckham

$1,100.66, under recapitulation and credits, that means a recapitulation of his deposit slip. If a bookkeeper or an accountant writes a good, legible hand, it is a little easier to keep the books in handwriting, it takes less time.

I understand that Mr. George Peckham and Mr. Harrell were good friends on January 1, 1926. Mr. Harrell was the chief executive officer of the bank, Mr. Peckham trustee of the Wichita Royalty Company. They had jointly acquired, with the view of developing, the Marlborough Addition, prior to January 1, 1926, also other interests. At that time they had acquired and were acquiring jointly what was known as the Curlee tract. Mr. Harrell testified the other day that he must have sold Mr. Peckham an interest in something in New
1784 Mexico. Mr. Harrell and Mr. Basham owned an undivided interest in a producing royalty in Wilbarger County known as the Stephens Royalty on January 1, 1926, Mr. Peckham acquired it. Mr. Harrell on January 1, 1926, owed the bank $7,500.00, that indebtedness was increased on January 11, 1926, to $10,560.00; eight days later, on January 19, 1926, Mr. Harrell's indebtedness was again increased to $15,574.44. On the same day George Peckham's liability to the bank amounted to $28,050.00.

I exhibit to you a check dated February 2, 1926, payable to J. T. Harrell and C. E. Basham, in the sum of $5,100.00, signed by Mr. Peckham and drawn on the plaintiff bank, paid February 2, 1926, that was deposited to Mr. Harrell's and Mr. Basham's account, and was in payment of a note executed in November, 1925, from G. W. Peckham to them, in his first purchase of Stephens Royalty; at that time Mr. Peckham and Mr. Harrell were jointly liable upon the original purchase price for the acquisition of the Marlborough property; that total indebtedness was approximately $52,939.00. At that time, January 1, 1926, Wichita Royalty Company was not indebted to the City National Bank, aside from obligations on oil payments arising out of the purchase of their property, they did not show to owe any notes payable. I am

unable to determine whether the negotiations began and were concluded for the purchase and sale of the second interest in the Stephens Royalty. For this
1785 second sale, G. W. Peckham, from his personal account, paid J. T. Harrell and C. E. Basham on January 5, 1926, $2,201.32. On January 25, 1926, he paid $10,028.00; on March 6, 1926, $5,060.00; on March 31, $5,087.00—included in those payments were items of interest. On January 16, the Royalty Company borrowed $15,000.00 from the City National Bank. The deed to the Curlee land is dated January 8, 1926, which recites a cash consideration of $4,814.00 and the assumption of certain notes. At the beginning of business January 4, 1926, G. W. Peckham's personal balance was $878.70. On that day Wichita Royalty Company check No. 452, was drawn on the Plaintiff bank payable to the order of G. W. Peckham for $5,000.00 and deposited to the personal account of G. W. Peckham in the plaintiff bank. On the next day, January 5, 1926, G. W. Peckham paid the Highland Irrigation Company $812.00. The $812.00 was paid out of G. W. Peckham's individual account and it was paid necessarily out of this $5,000.00 which the Royalty Company issued to G. W. Peckham as part of the purchase price of the Stephens Royalty—the $812.00 was paid to the Highland Irrigation Company as evidenced by the charge to G. W. Peckham's individual account. There remained on January 5, 1926, in G. W. Peckham's account, only the proceeds of that $5,000.00. The balance in his account decreased to January 11, and at the beginning of business on that day it consisted of $2,356.05 of funds originating with that $5,000.00 check, to be exact $2,296.30. That is the day G. W. Peckham issued his check for $2,567.75 in payment for the Curlee land, his interest in that
1786 land. There was another check given to Peckham on that day, No. 458, for $5,000.00, in payment of the Stephens Royalty but for the Wichita Royalty Company, that is what the royalty company books reflect. The next day Mr. Peckham's account still consisted entirely of the proceeds of those two transfers of

funds, if you charge his other funds, his other checks. On January 12, he paid Highland Irrigation Company $454.50, his part of the purchase price of some land, which he and Mr. Harrell and W. H. Peckham and Mr. Kemp then bought, part of the Marlborough Addition, being a small purchase after the main purchase in the fall of 1925. On January 16, 1926, Wichita Royalty Company was charged upon its liability with the bank $15,300.00, upon a note dated January 16, 1926, and signed by the Wichita Royalty Company by G. W. Peckham, trustee. The Wichita Royalty Company got credit for the proceeds of that loan on the 18th, I do not know why they didn't get credit when that obligation is dated, on the 16th, unless it was Saturday or preceded a holiday. On January 16, 1926, G. W. Peckham paid Mr. Harrell and Mr. Basham $2,201.32, of that amount approximately $1,362.87 was the proceeds of transferred funds, applying the minimum balance rule, that sum was applied to pay this check and that sum arose out of the payment from the Wichita Royalty Company to G. W. Peckham for the Stephens Royalty. Trust check No. 461 for $15,769.07, payable to the order of the Plaintiff bank was deposited to G. W. Peckham's account on January 18, 1926. G. W. Peckham did not
1787 make another personal deposit between that date and January 25, 1926. During that period that account consisted wholly of the proceeds of the $15,769.07 check transferred from the Royalty Company's account. On that date G. W. Peckham, from the commingled account, paid J. T. Harrell and C. E. Basham $10,028.00, one-half of which went to the personal account of J. T. Harrell and the other to the account of C. E. Basham. J. T. Harrell's personal balance with the bank just before that deposit was $186.29. On January 18, Mr. Harrell owed the bank $10,560.00. On January 15, he owed the bank $15,574.44, including interest—he owed that amount of money to the bank at the beginning of business on January 25, 1926. On January 16, Mr. Harrell paid the bank on his personal indebtedness $5,006.67. $4,320.48 of this $5,014.00 note which he collected off of George Peckham

and used to pay his personal debt to the bank. About a week after that, on February 2, 1926, Wichita Royalty Company check No. 466, for $400.00, issued and deposited to Peckham's personal account; that day, from his commingled account he paid J. T. Harrell and C. E. Basham $5,100.00, in payment of a note which he owed Mr. Harrell and the Stephens Royalty on the first deal, executed by G. W. Peckham personally in November, 1925. I would say none of that $400.00 was used to pay that $5,100.00 note of Peckham to Harrell and Basham, because he had enough money in his account to pay the entire amount without the $400.00. That $5,100.00, all except $1,472.46 of it, was out of the $15,769.07 check which
1788 George Peckham received from the Wichita Royalty Company on January 18, 1926. On February 18, 1926, George Peckham paid the bank $550.00 from his individual account; then on February 27, 1926, trust check No. 477, for $400.00, was deposited to his commingled account. On March 1, 1926, G. W. Peckham owed the plaintiff bank $28,050.00 with interest, he had owed that amount since the middle of November, 1925. On July 7, 1925, Mr. Peckham owed the bank $27,500.00; the balance in G. W. Peckham's personal account at the beginning of business March 1, 1926, was $341.90. On March 1, J. T. Harrell owed the Bank, $7,060.00. W. H. Peckham is the brother of George Peckham, and was one of the original Marlborough owners. On March 1, he owed the bank $6.120.00 and his personal balance was $1043.46. W. H. Peckham was jointly liable with J. T. Harrell, G. W. Peckham, J. A. Kemp upon the original vendor lien notes in excess of $52,000.00 for the original purchase of land later to be subdivided and developed as Marlborough Addition. On March 1, Wichita Royalty Company's note record, that is, his liability account, was charged with $25,500.00; the Wichita Royalty Company's deposit account was credited with $25,000.00 that same day. That day G. W. Peckham's check for $11,811.85 was issued payable to the order of W. H. Peckham, that was the consideration for G. W. Peckham's acquiring his

brother's one-fourth interest. G. W. Peckham's personal balance on March 1, was $341.90. His account then was not sufficient to pay Bill Peckham's $11,000.00
1789 check. W. H. Peckham's $11,000.00 check was charged to the account of G. W. Peckham on March 9, 1926. Between March 1 and March 9, 1926, G. W. Peckham had a beginning balance of $225.20, March 6, which consisted of his salary check for $400.00. On that same day, trust check No. 478 for $17,623.70, payable to the City National Bank was issued in voucher form, as other checks. The records of the Wichita Royalty Company were caused to reflect that the purpose of that check was to acquire one-half interest in the Marlborough Addition and to pay for improvements. The $17,643.70 check was deposited to G. W. Peckham's account with the bank, March 6, 1926. At the time of this deposit, the account was made up of check No. 477 for $400.00, being Peckham's salary account paid to him by Wichita Royalty Company. On that same day G. W. Peckham drew a check against that commingled account for $5,060.00, payable to the order of J. T. Harrell and C. E. Basham, one-half of which was deposited to Mr. Harrell's account and the other half to Mr. Peckham's account with the plaintiff bank. On March 9, W. H. Peckham cashed a check for $11,811.85, and on the same day W. H. Peckham paid his entire indebtedness of $6,120.00, to the bank. Of that amount which W. H. Peckham paid the bank on his account on March 9, 1926, all except $518.50 was from moneys which he had received from George Peckham, for his—W. H. Peckham's—quarter interest in the Marlborough Addition. W. H. Peckham had $5,582.90 of the money he received from George Peckham on March 9, to discharge his liability to the bank. And the
1790 money thus paid by G. W. Peckham was obtained from the $17,623.70 which he secured from the royalty company on March 6, 1926. That $17,623.70 transferred from the Royalty Company to G. W. Peckham was made up of $5,965.76 which the royalty company acquired in that loan of $25,000.00 from the City National

Bank and the remaining $11,657.94 was paid by the Wichita Royalty Company out of funds on deposit prior to the time they got the loan from the City National Bank. On that same date G. W. Peckham issued the royalty company's check for $6,000.00, which he deposited in the Security National Bank—I don't know whether that was the profit he made in a sale of personal property to his trust or not. I do not know how much expense the Marlborough partners had been out at that time. The Marlborough books reflect the capital investment and the expenses. On March 1, 1926, Peckham had been out $9,047.50, that is, W. H. Peckham jointly, G. W. Peckham had been out half of that amount which was $4,523.75. Occasionally bankers ask applicants for loans what they expect to do with the proceeds.

I would not say Mr. Peckham was a joint maker of this March 1, 1926, $25,000.00 loan, because he signed on the face of the note, because I have signed on the face of other men's notes when I was a guarantor, however, it is correct that Mr. Peckham signed on the face of the note.

My investigation has disclosed that Mr. Peckham executed a deed to a half interest on the Marl-
1791 borough Addition, no revenue stamps on it, the deed not being recorded, and does not appear to have ever been recorded.

Tracing the funds with reference to their application by G. W. Peckham, check No. 478 for $17,623.70; 485 for $7,500.00; 503 for $3,000.00; 507 for $1,500.00; 510 for $4,500.00; 519 for $1,000.00; 525 for $4,000.00; 532 for $4,357.58; 516-a for $538.16; 571 for $2,000.00, and 579 for $2,500.00, which makes a total of $58,019.44, I recognize those checks as being those deposited to the account of G. W. Peckham with the plaintiff bank and concerning which the trust books show them to have been in payment of Marlborough items. The $17,623.70 represents a payment from the royalty company to G. W. Peckham for the property called the Marlborough Addition. That money was paid to G. W. Peckham for his interest, and therefore did not go into the Marlborough books. The $17,623.70 has

no place in the Marlborough assets, it was never intended it should have any place in those assets as reflected on the Marlborough books. I have testified that G. W. Peckham accounted for certain of those items by making certain payments to the Marlborough Addition, that is, generally. I can trace these funds to their application, to the purpose expressed in the voucher, which supports the checks, issued by the Wichita Royalty Company to G. W. Peckham, which checks he deposited in his personal account and the first item you asked me about was check No. 478. G. W. Peckham got certain moneys which the records of the Royalty Company show to have been for
1792 payment of the purchase price or the improvement of the Marlborough Addition, and G. W. Peckham personally paid thereafter certain amounts of money and that is the limit of my intent to testify as to the tracing of these funds—these Marlborough funds. The minimum balance rule which I made application of was used to see, or to determine how much, if any, of these alleged trust funds were paid to the bank on Mr. Peckham's obligation to the bank, but it was not applied to see if he used personal funds to make these payments to the Marlborough Addition for the benefit of the Wichita Royalty Company. I did not try to trace through his account identical moneys, into the Marlborough Addition. He would get Marlborough money and draw checks on his account, which would run his balance down below the amount which he had received from the Royalty Company, as a payment for their portion of the Marlborough Expense—that is true. If I am not mistaken, my report did not report, nor was anything said about them, purporting to apply the minimum balance rule against his payments to Marlborough Addition. As far as the Marlborough Addition was concerned I attempted to determine whether or not Peckham had paid over to the Marlborough Addition an amount equal to that which he had received from the Wichita Royalty Company for that purpose. I found that he had not in two instances. Of the $9,595.74 made in the fall of 1926, he got all of that

except $2,226.40, from the $10,000.00 which he received from the royalty company for the Gray and Wheeler
County royalties which he sold to Wichita Roy-
1793 alty Company. I do not know that he sold the
Royalty Company that day to pay the notes of the Marlborough Addition, but he sold the royalty company some properties, being the Wheeler and Gray County properties on October 14, 1926, and he kept about $7,500.00 of that money and used it to pay that note.

Page 1497, Plaintiff Exhibit 212a covers property No. 71 Grimshaw property. G. W. Peckham got title to a quarter of the minerals on February 12, 1923, from Mr. Grimshaw, the deed shows a consideration of $8,000.00, then on March 1933, G. W. Peckham as an individual executed an escrow contract with himself as trustee to sell three-fourths of that interest. Defendant's Exhibit 37 is a deed from Peckham to F. O. Harrell, Defendant's Exhibit 36 is a deed from Peckham to the Royalty Company. These two instruments do not convey equally to those grantees, this quarter interest which Peckham got from Grimshaw; they convey to F. O. Harrell, trustee for the Perpetual Royalty Company, three sixteenth interest in and to all of the oil in that tract and to the Wichita Royalty Company they convey an undivided one-sixteenth interest in and to all of the oil and gas in that tract, and Mr. Peckham acquired an undivided 4/16th interest in the original purchase. The Wichita Royalty Company paid Mr. Peckham $7,500.00 for its interest. F. O. Harrell paid $2,500.00, that is, the Perpetual Oil Company did, F. O. Harrell as trustee. I cannot tell you how much profit Mr. Peckham made, because the first payment which the
Wichita Royalty Company made of $2,500.00,
1794 being the cash down payment, B. L. Fain got that.
It is my opinion that B. L. Fain and G. W. Peckham were jointly interested in the Grimshaw property, the record title was in the name of G. W. Peckham, who made the conveyance. This escrow contract was filed for record May 18, 1923, in Young County, Texas. The Wichita Royalty Company did not pay its trustee $7,-

500.00. The Wichita Royalty Company paid $2,500.00 to B. L. Fain and paid two notes, $2,500.00, which represented a deferred payment in the purchase price of property No. 71, upon which they paid $16.67 interest in one case and $33.33 interest in another. Among those checks which were introduced in evidence, were some checks from G. W. Peckham to the Wichita Royalty Company covering oil runs from the Grimshaw Royalty for the months of March and April, 1923, therefore, this property was producing when George Peckham sold it to the Wichita Royalty. As to the transfer of $3,516.67, the money Peckham got from his property which he sold to the Royalty Company, conveyed to that company, there was none of that amount to the first payment of $2,516.67 that has applied to pay his debts at the bank. The next payment to the bank, on May 15, 1923, when he paid the bank $1,008.55 on his personal indebtedness and none of the Grimshaw purchase price was used by Peckham in payment of any portion of that amount to the bank. Mr. Peckham's balance at the close of business May 1, 1923, was $1,488.94, on May 11, he deposited $500.00, and one check for $41.60, and a check drawn against his
1795 account, there was left in the account $2,533.33 and $1,309.84. The deposit on May 11, of $500.00, was in cash.

With reference to the Luke Wilson, property No. 75, on February 2, 1924, G. W. Peckham received $12,000.00 from B. L. Fain on the trust company s books as the trust company's books will show, check No. 154, was issued to B. L. Fain for some Oklahoma properties, and deposited in the account of G. W. Peckham written in his own hand. I do not know the indorsement of B. L. Fain, but I will say that G. W. Peckham did not write B. L. Fain's name on there, the testimony shows that Mr. Scannell wrote it. Mr. Peckham got the proceeds of that deposited to his personal account. On March 18, check dated the 17th, he received $9,250.00, and between those two dates, those two checks, he received from L. F. Wilson a conveyance to 1 8th royalty, Lots 13 and 14, Block 27, American Tribune

New Colony Subdivision of Archer County, Texas, for which on March 7, he paid Wilson $20,000.00 and on March 18, he paid $80,000.00; I did not check Mr. Wilson's personal account, but the checks indicate that Mr. Wilson got credit for it on a deposit. Mr. Peckham's account was not sufficient on March 6 to clear that check, that is, to pay it. There is a notation on the $20,000.00 check which indicates that there was not sufficient funds on deposit with which to pay that check. On March 6, W. H. Peckham borrowed $10,000.00 from the bank, and on March 6,

1796

G. W. Peckham borrowed $10,000.00 from the bank, the proceeds of these two notes were deposited to George Peckham's personal account, and I don't know whether the $10,000.00 which W. H. Peckham borrowed was deposited to his account, and the check given to George or not, but I know that two $10,000.00 item out of there went into George Peckham's personal account. On April 22, 1925, G. W. Peckham conveyed to his trust one-eighth of the interest he acquired from Wilson. He charged his company $21,250.00 in cash and $6,250.00 as the assumption of an outstanding $50,000.00 oil payment. At different times, and in varying interests, G. W. Peckham sold and conveyed to other parties a portion of this Wilson Royalty—he sold to Dr. Massie an interest for $75,000.00 cash and Dr. Massie assumed $25,000.00 oil payments; the United Royalty Company for cash, $27,000.00, including the cash and oil. Here is a contract between G. W. Peckham and the United. He sold them three 32nd of 1/8th. He sold the King Royalty Company an interest for $8,500.00, and $1,562.50 in oil. He sold R. A. King an interest for $20,000.00 including cash and oil, so I have $8,500.00, including cash in oil and that is the total consideration. He sold to the King Royalty Company 1/32nd of 1/8th for $8,500.00 in cash and in oil and here is the original contract of sale between Peckham and the King Royalty Company. When George Peckham bought this and paid $100,000.00 in cash he agreed to pay $50,000.00 out of the oil. The sale to the King Royalty Company for $8,500.00 in both a cash and

an oil consideration, the oil obligation runs with the original royalty which he acquired from Mr.
1797 Wilson, and the interest he sold, subject to the obligation. The contract here recites a consideration to be paid King Royalty Company as follows: $1,734.38 cash in hand paid, $1,734.37 due on or before May 7, 1924, $1,734.38 due on or before June 7, 1924, and the same amount due on or before July 7, 1924, the consideration was $7,937.50. Then on the next page, "In addition to the payments above, set forth the further sum of $1,562.50 shall be paid out of the other half of the oil and the proceeds of the sale of the oil herein assigned," which makes $9,500.00, which the King Royalty Company paid for that property, instead of $8,500.00—I was in error $1,000.00. However, this is just a contract of sale, I will have to look at the deed before I can tell. On the face of it, it would seem to be $9,500.00 in cash payable to Peckham. That same correction is applicable to the $25,000.00 item we talked about a minute ago, the United Royalty Company, it says that by the assumption of an oil debt. I do not have the contract to the Tolowa. He sold some of it to Mr. Fain's company, but I do not have the contracts and I do not know the terms on which it was sold. That shows he made quite a large profit in that transaction, I have not figured it. The amount of oil receipts by the Wichita Royalty Company from this property is $19,226.04, in cash, and the property was sold during the lifetime of Mr. Peckham for $6,000.00, with the commission paid and I am unable to find where Mr. Peckham accounted for the proceeds of that sale to his company.

1798 The J. H. White property is shown on page . . . Plaintiff's Exhibit 212a. On the day when the $11,000.00 check was charged against the Royalty Company's deposit account on that same day Mr. Peckham made a deposit in his own account of $11,000.00, plus other items which made up a total deposit of $11,321.82, but this was not a direct transfer from the royalty company to his account with the Plaintiff bank. I have not been able to determine where this $11,000.00 came from,

except that I eliminated the possibility of it being a direct deposit or a direct transfer of funds from the Wichita Royalty Company's account, to Peckham's account; I could not say that I have eliminated all probability or possibility of sources of that $11,000.00, other than his having gotten this check payable to the Security National Bank, because he deposited large sums of money, only ten days before that, he deposited an item of $10,000.00, and that did not come from the Wichita Royalty Company. The next payment on this property was on July 24, $10,000.00, he deposited $10,000.00 in his account on July 25, 1924, and the royalty company's check was paid on July 26, 1924. There is no instrument on record showing the title to this property in the Wichita Royalty Company. I have not been able to find any trace of any piece of property that has George Peckham's name on it or anybody else's, saying above the signature that they held that property in trust for the Wichita Royalty Company. We are in agreement as to the oil runs from that property, I don't remember the exact amount, but Mr. Scannell
1799 and I checked them up. The records reveal that in his lifetime he sold this property, or it was sold, and the Wichita Royalty Company received as the proceeds from the sale $1,796.86, plus $536.04; the sale was evidenced by a deed executed by Murchison and Fain, Robertson, Staley, Ross, and others. Mr. Peckham's name did not appear on any of these instruments dealing with what is known as the White lands.

Curtis Lane, property No. 78, Wichita Royalty Company, they have a deed in their files from F. O. Harrell, Wichita Royalty Company paid G. W. Peckham for it, $695.00, I don't know the amount G. W. Peckham paid F. O. Harrell.

Property No. 79, Routan, I went over that this morning, and I came to the conclusion that the $2,500.00 which I had theretofore thought had paid for the royalty, conveyed from Ray and Massie to Wichita Royalty Company was in fact a payment of his one-half interest in the leasehold estate rather than the royalty and his expenses in connection with the drilling of the well.

I will say that with the exception of four or five or possibly six properties all of the Wichita Royalty Company's properties were held in their name, eliminating nine properties which came from Gray and Wheeler counties, which G. W. Peckham conveyed to the Wichita Royalty Company, only about four came from him. The money was paid to Mr. Peckham, then the properties were conveyed to the Royalty Company.

1800 Property No. 80, is the Anderson tract, trust check No. 385 for $6,000.00; I cannot find where anybody held title to that for the Wichita Royalty Company in so far as Pointevant is concerned. $9,433.75 was paid Murchison and Fain for this Anderson. The interest treated in my schedules and testimony that G. W. Peckham acquired for that $9,493.75 is Plaintiff's Exhibit 178, which is Wichita Royalty Company's property No. 80.

Mr. Rogers:

It is agreed that the notation on Defendant's Exhibit 166, reads, "One-12th interest in deal with Allen Mooers, and Routan lands."

The Witness:

They got one-sixteenth interest in and to all of the oil and gas and other minerals in and under, and that may be produced from the following described land situated in Archer County, Texas, and it describes property No. 80, but not 1/16th of the royalty. I had this royalty deed from Peckhan. to the Wichita Royalty Company and had this check showing that he acquired the identical interest and the same number of acres and the same property which the Wichita Royalty Company bought; I think that George Peckham paid $9,493.75 for the identical interest which he conveyed by Plaintiff's Exhibit 174, to Wichita Royalty Company.

The Porter Ranch is No. 83, and none of the proceeds of checks of Wichita Royalty Company ever went into the original purchase of this land by G. W. Peckham, they were deposited to his account, these checks for $1,200.00

and another for $50.00. On December 21, he had paid
$1,200.00 as part of the down payment on that
1801 property. On December 28, he got $1,250.00 from
the Royalty Company and on January 2, he paid another $50.00, being the balance of his part of the purchase price for the Porter Ranch. I have not seen any instrument acknowledging the holding of this property in trust for the Wichita Royalty Company or conveying it to the Wichita Royalty Company.

Property No. 93, is Ellis County, Oklahoma, dated October 8, 1925. This deed of conveyance from G. W. Peckham to his trust, conveying this property, was not there—one instrument being a sale of oil and gas royalty and another instrument being an assignment of oil and gas was there. The Royalty Company just paid $160.00 for the lease and royalty. I believe that became valueless in George Peckham's lifetime.

The Polk property, October 9, 1926, F. O. Harrell acquired for himself a one-fourth of the royalty in the Polk land. The records do not show that the Wichita Royalty Company got a deed to that land, it shows that voucher notations were made behind checks which Peckham received the proceeds of, describing this property.

Property No. 94, is the Hartley County property, October 7. 1926, that never produced anything that I know of. That was a draft drawn on Mr. Peckham and he took up the draft drawn on himself with Royalty Company's check No. 557, for $1,920.00. That property never did produce
anything that I know of.
1802 The Millner Property No. 97, $1,500.00, or one
half of the consideration for that went to the account of G. W. Peckham, the other half to the account of B. L. Fain. The title came direct from Fain to the Royalty Company, and it had an income of less than $400.00. I don't think that was sold. I don't know what value, if any, it had in 1930.

The Callahan property No. 81, is the one where the draft was paid, attached to the conveyance with apparently the grantee's name in blank, in any event, the grantee's name

was in a different typewriter. I don't remember whether the draft was on G. W. Peckham or not. I think the transmittal letter is here.

The books and records of the Wichita Royalty Company were so kept that some purpose for every check that was written is shown on the books of the company, and whether the method and purpose and relationship, etc., of its uses, renders it an unauthorized account, I do not attempt to say. I know G. W. Peckham was personally interested in many of the transactions which I have investigated; I know that he received a part of the consideration for the sale by a third party to the Wichita Royalty Company, I have in mind the Millner $1,500.00. F. O. Harrell conveyed an interest or two to the Wichita Royalty Company, and it was so handled that I could tell what G. W. Peckham paid F. O. Harrell for it. Ray and Massie made a conveyance and I found out that George Peckham did not pay them the $2,500.00 which I thought he did.

If a stockholder had come down here, he would
1803 have found the books of the Wichita Royalty Company in balance, and would have found written on the books some excuse for the issuance of each check. The examination of those books would have indicated the Royalty Company owned these properties. The books only showed the Wichita Royalty Company's interest in its own property.

Re-Direct Examination.

By Mr. Humphrey:

If a stockholder had come and examined the books and records of the Wichita Royalty Company he could have ascertained that the company owned the Marlborough Addition and could have ascertained the expenditures of the Royalty Company on the Marlborough Addition; and a further examination would have shown from whence the Marlborough Addition properties came. The deed

to the Marlborough addition was on file with the royalty company and the letter of transmittal, and all the checks and vouchers in the possession of that company, showing exactly the expenditures on the addition. The books and records of the City National Bank would have shown to whom the deposits were made representing these vouchers. From the inception of it, there was a check of $17,223.70, and it was shown exactly what it is for. The checks issued by the Wichita Royalty Company in connection with the Marlborough Investment showed exactly what they were for. That is also true with reference to the Stephens Royalty. The deed from Harrell and Peckham was on file with the trustee, and copies of the vouchers were on file, in possession of the
1804 Wichita Royalty Company. The deeds to the properties owned by the Wichita Royalty Company were kept in an envelop and filed in that company's office. Every deed that Peckham gave from 1923 up to the time of his death, to the Wichita Royalty Company, was filed with that company. The Marlborough Addition deed was not recorded. There was no difficulty finding where this money went to the account of Mr. Peckham. The difficulty I had was on account of Mr. Peckham's death and finding what disposition he made of some of the funds. Dr. Massie is also dead, A. B. Duncan is dead.

Practically all of these properties were of a fluctuating nature, even including the Marlborough Addition.

I made an analysis of the Routan royalties on page 1500, Exhibit 212a, and found in my original analysis that Ray and Massie had a conveyance to one-sixteenth royalty interest to the Wichita Royalty Company on May 6, 1925. The deed is dated May 6, the date Mr. Peckham received the check from the Wichita Royalty Company, which the voucher notation showed was for the Routan Royalty, and showed to be an identical interest that Ray and Massie conveyed to the Wichita Royalty Company, and on that day or the day after Mr. Peckham gave Ray and Massie a check for $2,500.00, with the notations, 1/12th interest in Allen Moores Routan deal; so it corresponded in amount

and name of the property and designated that as a payment by Peckham for that interest. I did not have access to Ray and Massie's books. When I made this investigation I did not see those deposit slips, I am not
1805 familiar with the actual facts that had been disclosed, or which we had found out later concerning this royalty, I have not had time to look into it, but I will.

From the time George Peckham took charge of the Wichita Royalty Company affairs up until the time of his death, the records showed that he had acquired numbers of royalties. Substantially all of the royalties or properties that George Peckham acquired were taken in the name of the Wichita Royalty Company. The only ones that I recall that the records do not reveal, to some extent in the name of the company, is property No. 95, the Paulk lands and property No. 96, which is the North Anderson Ranch lands, and the Porter Ranch, which stood in the name of Knight and Hines. The White lands in Fain's name, and the Pointevant twenty acres.

Exclusive of the Wheeler and Gray County properties, involved in this case, the other properties which the Wichita Royalty Company acquired from George Peckham were only three or four—the Hartley County Royalty is one, that was a contemporaneous transaction, purchased through a draft on Peckham, with a deed to Peckham and Peckham used the Royalty Company's money to pay up the draft, and contemporaneously deeded the property to the Royalty Company. Then the Grimshaw property, it produced more than the cost price, and their property No. 80, being the Anderson Ranch property, which also produced more than it cost. The South Anderson Ranch produced more than the purchase
1806 price. The Wilson Royalty, the only other property is the Marlborough Addition. The Wilson with the sale value, produced more than the purchase price. The Marlborough Addition was acquired direct from Peckham. Every one of these deals, the Hartley, the Wilson, the Grimshaw, the South Anderson Ranch,

the Marlborough Addition, the books, reflected that they were acquired from George Peckham, and any stockholder could have ascertained that fact.

In addition to the properties above named, they acquired Property No. 93, Ellis County Royalty, also a lease which cost them $160.00, they acquired that from Mr. Peckham, that is all I recall.

The Millner Oil payment, apparently Mr. Fain was interested in that with Mr. Peckham and the Grimshaw those are the only two I recall wherein it is shown that any associate of Peckham, and where Peckham received a part purchase price, sold royalties of producing properties to the Wichita Royalty Company.

I was also asked with reference to the payment to the bank; the first payment of any sum made by Mr. Peckham to the City National Bank, since he became trustee, was February 6, 1923; the second payment March 5, 1923. Mr. Rogers asked me to explain Mr. Sheppard's analysis with reference to these payments, either of those payments, following the minimum balance rule that I have set out here, and I will say that there was not any transferred funds used in making those payments.

1807 E. E. SCANNELL, recalled for further direct examination by Mr. Rogers, testified as follows:

Mr. Rogers:

Let the record show that opposing counsel, at pages 770 to 802 of the record, and elsewhere in the record, have made inquiry of the witness Scannell on cross examination, for an explanation of certain checks, to which, at several times of the inquiry, the Royalty Company objected because of the immateriality of the inquiry, and of the admission of the bank accountants and auditors, that they form no part of an accounting between the parties. And having no way to have the objection passed upon and the inquiries to the answers and checks being referred to in the evidence, the witness E. E. Scannell is recalled for the purpose of mak-

ing an explanation of the items, but that counsel asks that the former objections be sustained and the testimony be stricken and the testimony now offered withdrawn. But the testimony not to be withdrawn in the event any of the original testimony, of which this is explanatory, is left in the record.

The Witness:

I have heretofore been asked to make an explanation of certain checks and certain items, and I have those grouped, and an explanation of checks shown which have heretofore been asked for. I have checked the books and records and noted down and explanation of each and have prepared a memorandum.

Inquiry was made yesterday as to a great number of checks, and I have a memorandum with refer-
1808 ence to those items. Of the checks inquired about yesterday there was only one item which was not covered by my report, and that is on 12-9-24, check from G. W. Peckham to Wichita Royalty Company, Texhoma, Wilson Storage and it is shown on our ledger from the period May 1, to July 31, 1924, $197.83, and marked Storage. I prepared this statement and it is correct.

Mr. Rogers:

We offer the statement in evidence, Defendant's Exhibit 172.

1809 DEFENDANT'S EXHIBIT 172.

Exhibit Making Explanation of Checks Shown on Pages 770 to 802 of this Record.

Date	To Whom—Explanation	Amount
2-16-23	Wichita Royalty Co. "Oil runs Hattie Vaughan Collected 2-12-23." This check is shown on our ledger under this property as received from George Peckham. Peckham, as Trustee, collected this money and turned it over to the Company	499.82

Date	To Whom—Explanation	Amount
1-13-25	Wichita Royalty Co. "Texhoma 12-16-31 Wilson Royalty paid 1-16-23." Shown on oil run ledger as received for period 12-10-15 under Maer Staniforth lease Wilson Royalty	31.04
1-13-25	Wichita Royalty Co. "Refund on McCrory Wilson Royalty." This much was overpaid by us on $6,250.00 oil debt on Wilson Royalty Co. and Mr. McCrory refunded overpayment. See oil run ledger this date. Mr. Peckham collected and turned this amount over to the Company	52.27
11-28-24	Wichita Royalty Co. "Texhoma runs 11-1 to 11-15, Wilson Royalty." This is shown on ledger as received for period Nov. 1, to Nov. 15	36.03
3- 7-23	Wichita Royalty Co. "Oil runs H. Vaughn collected 3-3-23." Shown on our oil run ledger as received from Hattie Vaughn through George Peckham	259.92
3- 7-23	Wichita Royalty Co. "On contract with Interstate Royalty Co." Cash receipt Memorandum #1858 sale of Comar—See Royalty to Interstate Royalty Co.	500.00
3-17-23	Wichita Royalty Company. "Payment on 20 acre Howland Royalty Co." Cash receipt Memorandum #1856 accounts receivable W. H. Peckham sale Rowland Royalty	500.00
1-16-23	Wichita Royalty Co. "Oil runs Hattie Vaughn. Paid 1-18-23."	855.54
1-13-23	Wichita Royalty Co. "Oil runs paid 1-16-23." Our Cash Receipt Memorandum Nos. 1775, 1777, 1778 and 1781 include runs from Hattie Vaughn	

Date	To Whom—Explanation	Amount
	Royalty. These were written up by Mr. Rogertson and we can not definitely separate the items. This is about time our change in Trustees became effective. On January 15, we show a deposit to oil runs $5,794.79 to Security National Bank, and January 18, $3,661.83	240.84
7-29-27	Wichita Royalty Co. "Knight & Hines Porter Ranch Rent." Cash Receipt Memorandum #208, July 29, 1927, on our ledger under lease rental income, M. L. Porter Ranch	115.81
2- 4-25	"Refund Commission Lane Royalty." Cash Receipt Memorandum #116, credit to Royalties owned #78 February 11, 1925	31.25
2-14-23	Wichita Royalty Co. "Payment on Royalty sold to Harrell." Paid February 15, 1924. See our Cash Receipt Memorandum #1814 on purchase of Ellis Holmes Royalty.....	3,000.00
2- 6-23	Wichita Royalty Co. "Oil runs 4 ac. Hattie Vaughn collected 1-27-23." Shown on our records as received from G. W. Peckham on Hattie Vaughn. on oil run check which he collected for use. Peckham, as Trustee, collected these runs and these checks are the payment of the money he collected	566.37
8-15-23	Wichita Royalty Co. "Oil runs 35 acre Royalty Interest, Eagle Picher." 7-16-23 to 7-31-23. Oil run ledger shows on 67, 70 and 73, we received payment for period July 16 to July 31, 1923	199.92
1-26-24	Wichita Royalty Co. "Paid 2-2-24." On January 19, 1923, the Company	

Date	To Whom—Explanation	Amount
	gave its check #147 for Royalty purchase, and this is return of that $500.00 to Wichita Royalty Company account. See our ledger account under Notes & Contracts Payable (Royalties)	5,000.00
2-26-24	Wichita Royalty Co. "Paid 2-8-24." On Ellis Holmes for September, 1923	14.15
4-15-24	Wichita Royalty Co. "Oil run last half March Texhoma-Staniforth Lease, Archer County." Credited on oil run ledger for last half March...	184.54
5-25-23	Wichita Royalty Co. "Oil run Grimshaw for April run by Humble, paid 2-30-23." Oil run ledger entered this as Runs for month of April, 1923, on Grimshaw, as received from G. W. Peckham	302.98
5-15-23	Wichita Royal Co. "Oil run on Grimshaw on Mar. 12 to March 31, 1923." Oil run ledger shows this as received from Peckham and entered on Grimshaw	234.05
8-14-23	Wichita Royal Co. "Oil run 1-9 to 7-15, 1923, on 1/64 Eagle Picher sold by Fain to Wichita Royalty Co." On oil run ledger under property, 67, 70, and 73, is part of deposit 19,512.14 dated August 14, 1923	1,309.47
8-14-23	Wichita Royalty Co. "Oil run 12-7-22 to 7-15-23, on 1/32 Ellis Holmes sold by W. W. Peckham to Wichita Royalty Co." Oil run ledger shows this item credited on Ellis Holmes as collected by Peckham, part of deposit of $19,512.14, dated August 14, 1923, our Cash Receipt Memorandum #19	5,736.16

Date	To Whom—Explanation	Amount
7-23-24	Wichita Royalty Co. "Texhoma runs for last half June, Wilson Royalty." Shown on ledger as received for last half of June	40.04
7-31-24	Wichita Royalty Co. "Texhoma first half July Wilson Royalty." Shown on ledger as received for period July 1, to July 15, 1924	35.78
4- 9-24	Wichita Royalty Co. "Oil run Texhoma-Staniforth first half March." Credited on our oil run ledger to this Royalty	141.38
4- 9-24	Wichita Royalty Co. "Oil run Panhandle R. M. F. first half March." Credited on oil run ledger as received March 1 to March 15, from Peckham as Trustee. Merely collected these checks for the Company and turned them over to it	525.07
9- 5-24	Wichita Royalty Co. "Panhandle runs for May and first three days in June, Wilson Royalty." This is shown on oil run ledger as received from G. W. Peckham for period May and 3 days of June	751.41
9- 3-24	Wichita Royalty Co. "Texhoma-Staniforth last half of July." This is shown on ledger as received for last half of July	34.75
6-28-24	Wichita Royalty Co. "First half of June, Texahoma-Staniforth." Shown on ledger as received from George Peckham for June 1 to June 15. Geo. Peckham, as Trustee, collected these runs due us	55.64
7- 5-24	Wichita Royalty Co. "Griswold runs March and April R M F Lease." Credited as received from Griswold March 16 to April 30 on oil ledger	135.42

Date	To Whom—Explanation	Amount
12-30-24	Wichita Royalty Co. "Texhoma Wilson Royalty December 1 to December 15." Shown on oil run ledger as received for period Dec. 1 to Dec. 15, Peckham, as Trustee, collected these run checks and turned them over to us	34.66
12-13-24	Wichita Royalty Co. "Texhoma last half November Wilson Royalty." Shown on ledger for last half of November	33.23
11-12-24	Wichita Royalty Co. "Texhoma Wilson Royalty, Oct. 16 to Oct. 31." Shown on ledger for last half of October	47.08
10-28-24	Wichita Royalty Company. "Texhoma Wilson Royalty Oct. 1 to October 15." Shown on ledger for period Oct. 1 to Oct. 15. These checks collected by Peckham as Trustee, and turned over to the company	39.05
6-12-24	Wichita Royalty Co. "Texhoma Wilson Royalty, last half of May." Credited on oil run ledger for last half of May	74.63
11- 6-25	Wichita Royalty Co. On October 8th, Company gave its check #427 for $1500. On November 10, our cash receipt memorandum #148. This money is returned to Company account	1,500.00
5- 2-24	Wichita Royalty Co. "Panhandle first half of April, R. M. F. Lease." Shown on oil run ledger as received for first half of April. These checks belonged to Wichita Royalty Company and were collected by George Peckham as Trustee	480.04

Date	To Whom—Explanation	Amount
4-24-24	Wichita Royalty Co. "Panhandle R. M. F. last half March." Shown on oil run ledger as received for last half of March	375.55
4-29-24	Wichita Royalty Co. "Texhoma-Wilson, first half of April." Credited oil run ledger for first half of April	206.58
5-13-24	Wichita Royalty Co. "Texhoma-Wilson, last half of April." Credited on oil run ledger for last half of April	182.44
5-28-24	Wichita Royalty Co. "Texhoma-Staniforth, First half of May." Credited on oil run ledger for first half of May	138.75
5-26-24	Wichita Royalty Co "Panhandle R. M. F. Lease, last half of April." Shown on oil run ledger for last half of April	538.30
10-16-24	Wichita Royalty Co. "Texhoma Wilson, last half of August." Shown on ledger for period August 16 to August 31	54.37
9- 3-24	Wichita Royalty Co. "Texhoma runs Staniforth first half August." Shown on ledger for period of August 1 to August 15	52.83
12- 9-24	Wichita Royalty Co. "Texhoma Wilson storage shown on Ledger for period May 1 to July 31 '24	197.83
10-16-24	Wichita Royalty Co. "Texhoma Wilson, Sept. 1 to Sept. 15." Shown on ledger for period Sept 1 to Sept 15	47.36
10-16-24	Wichita Royalty Co. "Texhoma Wilson, Sept. 15, to Sept. 30." Shown on ledger for period Sept. 16 to Sept. 30	45.00

Date	To Whom—Explanation	Amount
Duplication		
3-17-23	Wichita Royalty Co. "Payment on 20 acres on Rowland Royalty." Probably duplication of check same date above testified to	500.00
Duplication		
3- 7-23	Wichita Royalty Co. "On contract with Interstate Royalty Co. on See Royalty," duplication on Cash Receipt Memorandum #1858 testified above. Probably should refer our Cash Receipt Memorandum #1897 for $500, payment on Comar-See Farm	500.00
1-30-26	Wichita Royalty Co. "Runs first ½ January Stephens Royalty." $522.03 and $713.96 make up this item on oil run ledger and shown as received from G. W. Peckham	1,235.99
7-26-26	Wichita Royalty Co. "Rental on Porter Ranch." Cash Receipt Memorandum #171, dated July 27, 1926, our ledger account under Lease Rental income M. L. Porter Ranch.....	111.67
2-18-26	Wichita Royalty Co. "Runs last half of January Stephens Royalty." $403.39 and $699.74 make up this item on oil ledger and show received from G. W. Peckham	1,103.13
6-29-23	"City National Bank draft for Wichita Royalty Co. on Harrell Payment Ellis Holmes." Cash Receipt Memorandum #2, June 29, states payment from F. O. Harrell on Ellis Holmes with interest $26.67	1,026.67
8-14-23	Wichita Royalty Co. "Oil runs Jan. 9 to July 15, 1923, on 1/64 Eagle Picher sold by W. H. Peckham to Wichita	

Date	To Whom—Explanation	Amount
	Royalty Co." Shown on oil run ledger property 67, 70, 73. This item and one previously mentioned, along with 2,356.74 shown next, are all together on our oil run ledger, deposited in City National Bank, as part of 19,-512.14, August 14, 1923. Cash receipt Memo #18	1,309.47
8-14-23	Wichita Royalty Co. "Oil run Jan. 9 to July 15, 1923, on 9/320 Eagle Picher, sold by Fain to Wichita Royalty Co. and deposited in City Nat'l Bank as part of deposit of 19,512.14 of August 14, 1923	2,356.74
8-14-23	"City National Bank draft to Wichita Royalty Co. Cash Receipt Memorandum #17, account receivable B. L. Fain, dated August 14, for $8,500.00 and Interest $300.30, part of deposit in City Nat'l Bank of August 14, 1923, in the amount of $19,512.14	8,800.30
7-25-23	"City National Bank draft to G. W. Peckham, cashed by Wichita Royalty Co. 7-26-23." Cash receipt Memo #12, accounts receivable F. O. Harrell $1,000.00, interest $33.33, on his purchase of Ellis Holmes Royalty...	1,033.33

The Witness:

The next is a group of checks totaling $15,933.81, being checks No. 46, Wichita Royalty Company, 47, 48 and 49. Those four checks make up George Peckham's deposit on August 14, 1923, to his personal account. They asked me to get them and find out where it was in the record, and that is where it is. No. 46, the amount of it is $9,219.51, the check is made to W. H. Peckham and it is indorsed by W. H. Peckham, under it G. W. Peckham and seems to be in the same handwriting. Check No. 47 is in the amount

$1,560.00 issued by B. L. Fain and it is indorsed by B. L. Fain and under it G. W. Peckham. And that seems to be in the same handwriting, the genuine signature of B. L. Fain. The next is check No. 48, in the amount of $1,033.33, is made to W. H. Peckham and is indorsed W. H. Peckham and under it G. W. Peckham, both of those instruments in the handwriting of G. W. Peckham. The next is No. 49, for $4,120.97, issued to B. L. Fain and it is indorsed by B. L. Fain and under it G. W. Peckham and it is G. W. Peckham's handwriting, and is the genuine signature of B. L. Fain.

The next group of checks involved the amount of money that I received from the Wichita Royalty
1819 Company since my trusteeship, I have a schedule of my receipts for the account of salary, I received $11,790.12 or an average for the seven years and three months from November 1, 1929, to February 1, 1937, of $135.52 per month. During Mr. Peckham's trusteeship, he received either $500.00 during the first part or $400.00 during the latter part of his administration.

Mr. Rogers:

We offer the instrument in evidence, Defendant's Exhibit 173.

1820 (Marked "Defendant's Exhibit 173," as follows:)

DEFENDANT'S EXHIBIT 173.

Wichita Royalty Company.

Exhibit—Salary Account—E. E. Scannell.

Date	No. Check	Detail	Amount
11-30-29	861	Bookkeeper for November 1929	$ 200.00
12-31-29	868	Trustee-bookkeeper Dec. 1929	400.00
1-21-30	875	" "	200.00

Date	No. Check	Detail	Amount
1-31-30	883	" "	200.00
2-15-30	889	" "	200.00
2-28-30	892	" "	200.00
3-15-30	896	" "	200.00
3-31-30	897	" "	200.00
4-15-30	903	" "	200.00
4-30-30	905	" "	200.00
5-16-30	909	" "	200.00
5-31-30	912	" "	200.00
6-13-30	918	" "	200.00
6-25-30	922	" "	200.00
7-16-30	931	" "	200.00
7-31-30	936	" "	200.00
8-15-30	939	" " Indorsed H. C. Richardson	200.00
8-30-30	940	" "	200.00
9-18-30	949	Bookkeeper for November 1929	200.00
9-29-30	953	Trustee-bookkeeper Dec. 1929	400.00
10-16-30	958	" "	200.00
11-14-30	963	" "	200.00
12- 1-30	968	" "	200.00
12-15-30	969	" "	200.00
12-30-30	973	" "	200.00
1- 9-31	974	" "	145.00
1-14-31	978	" "	255.00
3-31-31	983	" "	100.00
4- 1-31	986	" "	150.00
4-15-31	992	" "	200.00
4-30-31	994	" "	100.00
5-20-31	999	" "	200.00
6-12-31	1005	" "	140.00
6-15-31	1006	" "	60.00
7- 1-31	1008	" "	200.00
7-31-31	1013	" "	200.00
8-31-31	1016	" "	200.00
10- 1-31	1018	" "	200.00
10- 1-31	1023	" "	200.00
12- 1-31	1026	" "	200.00

Date	No. Check	Detail	Amount
1- 1-32	1027	" "	200.00
2- 2-32	1028	" "	400.00
2-20-34	1042	Trustee Bookkeeper Dec. 1929	150.00
2-20-34	1043	" "	150.00
2-20-34	1044	" "	256.94
6- 6-34	1045	" "	273.56
10-20-34	1046	" "	578.39
		Balance carried forward.....	$9,958.89
(Page 2)		Balance brought forward	$9,958.89
4-30-30	J. E. 7A	Furniture Sold	34.65
5-26-32	J. E. #8	Executive Salary	50.00
5-26-32	J. E. #8	Clerical Salary, Etc.....	550.00
5-31-33	J. E. #5	" " "	1,015.04
4-30-34	J. E. #7	" " "	40.00
9-30-33	J. E. #3	" " "	380.80
12-31-33	J. E. #10	" " "	30.00
6- 1-34	J. E. #2	" " "	108.58
5-31-35	J. E. #14	" " "	250.00

Total collected for period November 1, 1923, to February 1, 1937, *7 years and 3 months* (?) $12,417.96

Credits to Salary Account, not taking into consideration personal moneys expended:

12- 9-33	Check to Wichita Royalty Co. See our Cash receipt Memorandum #2452	$100.00	
11-13-33	Check to Guy Rogers, payment on Legal Expense..	277.84	
6- 1-36	See Cash on Hand account on 6-1-36	250.00	
			627.84
	Balance		$11,790.12
	Average monthly salary paid E. E. Scannell, Trustee, for 7 years and 3 months from Nov. 1, 1929, to February 1, 1937		$135.52

The Witness:

I have made an analysis concerning the cash of the Wichita Royalty Company during my trusteeship from the period January 16, 1931, down to 6-30-36. The figures therein stated are correct, and the amount referred to, the books and records of the company, whereby they may be supported.

Mr. Rogers:

We offer the instrument in evidence, marked "Defendant's Exhibit 174."

DEFENDANT'S EXHIBIT 174.

Wichita Royalty Company—Analysis of Cash on Hand.

1931			
1-16-31	Cash Recepit Memo. #295, Oil Runs	$414.93	
	Cash Disbursement—		
	Von 975 Martin Linen Supply Co.		4.00
	Von 976 Telephone		4.00
	Von 977 Our part office Rent		26.67
	Von 978 Executive Salary (See personal salary acct.)		225.00
	Von 979 Juanita Perry, Steno.		6.00
	Cash Receipt Memo #296, April 2, transferred to Bank account		118.26
1931-32:			
3- 9	Oil Runs	14.89	
3- 9	" "	7.24	
3-14	" "	37.84	
3-15	" "	81.19	

1931-32:				
5- 9	Oil Runs	.....	36.52	
5-12	" "	.....	114.58	
5-20	" "	.....	58.04	
5-26	" "	.....	106.42	
6-14	" "	.....	144.93	
2-25	" "	.....	95.00	
3-14	J. E. #8	Rent		25.00
5-26	J. E. #8	Office Supplies ...		16.75
5-25	J. E. #8	Stenographer		12.00
5-26	J. E. #8	Postage		30.00
5-26	J. E. #8	Executive Salary (See Personal Salary Acct.)		50.00
5-26	J. E. #8	Clerical Salary (See Per. Sal. Acct.)...		550.00
5-31-32	J. E. #14	Forwarded to next year		12.90
1932-33				
6- 1-32	J. E. #1	Transferred from previous yr.	12.90	
6-15-32	J. E. #4	Oil Runs.....	123.19	
6-15-32	J. E. #4	" "	126.91	
6-15-32	J. E. #4	" "	130.38	
6-15-32	J. E. #4	" "	126.11	
6-15-32	J. E. #4	" "	138.90	
6-15-32	J. E. #4	" "	141.15	
6-15-32	J. E. #4	" "	141.73	
6-15-32	J. E. #4	" "	31.05	
6-15-32	J. E. #4	" "	104.41	
6-15-32	J. E. #4	" "	74.05	
6-15-32	J. E. #4	" "	96.61	
6-15-32	J. E. #4	" "	79.45	
6-15-32	J. E. #4	" "	45.62	
Dec. 31	J. E. #3	Kilgore & Rogers		126.91
"	"	" "		126.11
"	"	" "		104.41

1932-33:				
May 31	J. E. #5	E. E. Scannell (See Personal Sal. Acct.)		1,015.04
1933-34				
6-23-33	J. E. #2	Oil Runs	57.42	
7-15-33	" " "	" "	189.15	
9-15-33	" " "	" "	134.23	
12-14-33	" " "	" "	131.41	
9-30-33	J. E. #3	E. E. Scannell (See Personal Salary Account 512.21)		380.80
11-14-33	Cash Receipt Memo. #2452			131.41
1934-35				
6- 1-34	J. E. #3	Oil Run	115.48	
"	" " #3	" "	108.58	
"	" " #3	" "	87.27	
"	" " #4	" "	96.22	
"	" " #5	" "	354.09	
"	" " #7	" "	453.84	
"	" " #9	" "	42.23	
"	" " #10	" "	61.49	
5-31-35	" " #13	" "	18.75	
6- 1-34	J. E. #1	Legal Service..		115.48
"	" " #2	E. E. Scannell (See Personal Salary Account)		
"	" " #6	Kilgore & Rogers		354.09
"	" " #8	" "		203.84
"	" " #11	" "		158.16
"	" " #12	" "		148.25
5-31-35	" " #14	E. E. Scannell (See Personal Salary Account)		250.00
1935-36				
4-10-35	Journal	Oil Run	187.65	
4-24-35	"	" "	53.86	
5-26-35	"	" "	53.31	
5-29-35	"	" "	541.92	

1935-36:			
5-29-35	Journal Oil Run	1,508.71	
5-31-35	" " "	563.47	
5-31-35	Journal Oil Run	10.00	
5-31-35	" E. E. Scannell (See Personal Salary Account)	250.00	
5-31-25	" Oil run.....	26.74	
5-31-36	Cash Receipt Memo #2464		187.65
"	" " " "		53.86
"	" " " #2465		1,508.71
"	Journal forwarded to next year		1,445.44
1936-37			
6- 1-36	Journal from Previous year	53.31	
"	" " " "	541.92	
"	" " " "	563.47	
"	" " " "	10.00	
"	" E. E. Scannell (See Personal Salary Acct.)	175.00	
"	" " " "	75.00	
"	" from Previous Year $1445.44	26.74	
"	" Oil runs, etc.	109.81	
6-30-36	Cash Receipt Memo. #2466 Transferred to Bank ...		26.74
6-30-36	Cash Receipt Memo. #2466 Transferred to Bank ...		10.00
6-30-36	Cash Receipt Memo. #2466 Transferred to Bank ...		53.31
6-30-36	Cash Receipt Memo. #2467 Transferred to Bank ...		175.00
6-30-36	Cash Receipt Memo. #2467 Transferred to Bank ...		563.47
6-30-36	Cash Receipt Memo. #2470 Transferred to Bank ...		541.92
	Cash on hand 2-1-37		184.81
	Grand Total	$9,084.57	
	Grand Total		$9,084.57

1828 The Witness:

The next group of items consists of and has to do with the joint ownership of George Peckham and I, in the block of City lots that we had in block 44a, of Highland Addition, we refer to them as out near the Catholic Cemetery. I was asked to explain on Defendant's Exhibit 73, a check dated August 3, 1925, from G. W. Peckham in the amount of $218.97, the check was marked Lot 16, Block 44a, sold to Copeland. Then there was various other references at different places in the record whereby I was asked about my ownership with George Peckham of lots in Marlborough Addition, and this Exhibit 175 shows the check that I paid out on Block 44a, and what was done with it.

Mr. Rogers:

We offer the instrument in evidence, marked "Defendant's Exhibit 175."

DEFENDANT'S EXHIBIT 175.

The following checks are given in explanation of jointly owned block of city lots in Block 44-A, Highland Addition to City of Wichita Falls, by G. W. Peckham and E. E. Scannell. Abstract submitted shows joint ownership:

D-Ex-73:

8- 3-25 Check from G. W. Peckham $218.97, marked "Lot 16, Block 33A, sold to Copeland." My deposit slip shows received $218.97 on Lot 16, Block 44-A, on the lot sold to Copeland. Mr. Copeland turned in this check to Mr. Peckham instead of me. This check is paying me my part.

Following are list of my checks paid out on this transaction, and are shown herewith:

To:—

1- 2-25	Kemp & Kell. "Forfeit on Lots 9 to 16 inc. Block 44-A, H. L." $4200.00, 1/3 cash, balance 1-2 yrs.	200.00
1- 9-25	Kemp & Kell. "Lots 9-16, Block 44-A. Reference is made to list of checks furnished by Mr. Carson of the City National Bank. On January 12, 1925, I received George Peckham's check for $700, covering his 1/2 interest in above initial payments	1200.00
11- 6-25	G. W. Peckham, indorsed by him cleared 11-6-25 Notation Recording & Filing Deed on Lot 9, Block 44, Highland	3.25
11-28-25	G. W. Peckham, indorsed by G. W. Peckham, cleared 12-3-25 Notation Cash Payment on Lots 9-10-15 Block 44-A, Highland	81.63
11-28-25	King & Junker, indorsed by them, cleared through City National Bank Nov. 30, 1925. Notations "Block 44-A." This was commission paid to King and Junker on sale of some of these lots ...	148.75
12-19-25	G. W. Peckham, indorsed by G. W. Peckham cleared 12-25-24, Notation "Lot 10, Block 44-A"	189.24
12-22-25	G. W. Peckham, indorsed by G. W. Peckham cleared 12-25-25 Notation "Lot 15, Block 44-A, Highland"	189.17
1-30-26	G. W. Peckham indorsed by G. W. Peckham, cleared February 2, 1926, Notation "Taxes on Lots Blk. 44-A, Highland	28.49
4-20-26	F. M. Copeland indorsed by him, cleared 4-30-26, Notation "Delinquent taxes on Lot 16, Block 44-A Highland"	13.65

1-11-26	G. W. Peckham indorsed by G. W. Peckham, cleared Jan. 12, 1926, Notation "Payment and Interest on Lots in Block 44-A, Highland. Pencil Notation "Principal $350.00, interest $56.00" ...	406.00
6-20-26	G. W. Peckham indorsed by G. W. Peckham, cleared 6-26-26, Notation "First Installment on paving on 4 Lots, Ave. L, Block 44-A, Highland, $120.60. Drawing deed Copeland $2.50	123.10
1-21-27	Wichita County Clerk Notation "Recording releases on Block 44-A, Highland	3.00
1-25-27	G. W. Peckham, indorsed G. W. Peckham, cleared Jan. 26, 1927, Notation "Final Payment on Lots in Block 44-A, Highland." Pencil Notation "Principal $350.00, Int. $28.00"	378.00
3-23-27	G. W. Peckham, indorsed by G. W. Peckham cleared 3-24-27. Notation "Taxes 1926 on Block 44-A"	37.02
6-14-27	L. E. Whitam Company, indorsed by L. E. Whitham Co. by W. B. Abbott. Notation "Paving on Avenue L, Lots"	338.28
2-28-28	W. R. Hyer, Tax Collector. Notation on check "Lot 13, 14, Block 44-A, City 18.76, School 14.00"	32.76
6-14-28	L. E. Whitham & Co. Notation "Paving installment on Lot 14, Block 44-A, Highland"	79.74
6-14-28	L. E. Whitham & Co. Notation "Paving installment on Lot 13, Blk. 44-A, Highland"	79.74
6-11-29	L. E. Whitham & Co. Notation "Paving Lot 13, Block 44-A." Pencil Notation "Avenue L. Cert. 22-267 #4 Company & Interest"	74.91
7- 1-29	L. E. Whitham & Co. Notation "Pavement Lot 14, Block 44-A"	74.91
		$3,681.64

The effect of this schedule shows that George Peckham owes me nothing and that I owe him nothing.

1832 The Witness:

The next group inquired about by counsel relates to the receipts from the District Court of Wichita County concerning certain items, turned over by R. L. Sanford, the district clerk, as collected from the pipe line companies, and are; our cash receipt memos, in the first instance, $80.10, check from the Pure Oil Company was check No. 4317, dated July 2, 1936, was deposited to our bank in our C. R. N. No. 2468. Item $85.56, Gulf Refining Company, check No. 16001 drawn on American National Bank of Beaumont, deposited to our bank account in C. R. N. No. 2460. The next item, in the amount of $11.53, Magnolia Refining Company, received R. L. Sanford, District Clerk, October 26, 1936, is included in our deposit of $51.54 on our C. R. N. 2469.

Mr. Boone also asked me at various places in the record, and insinuating that I received $12,000.00 proceeds of royalty check No. 154, that is my explanation and I wrote it myself.

Mr. Rogers:

We offer it in evidence.

(Said instrument marked Exhibit 176, but withdrawn as hereinafter shown.)

DEFENDANT'S EXHIBIT 176.

The Witness:

Mr. Peckham died leaving approximately $100,000.00 in life insurance.

As to Defendant's Exhibit 176, there are probably certain statements which should not be made.

1833 Mr. Rogers:
I withdraw Defendant's Exhibit 176.

The Witness:
Some of the proceeds of transferred funds went to pay the premiums on life insurance policies of Mr. Peckham. I have analyzed the account of Mr. Peckham with the bank in reference to the payment of premiums, by what I understand Mr. Lambert to mean, the minimum balance rule. It shows that premiums on this life insurance were paid out of trust funds on April 26, 1926, and the amount of the premium was $624.40, and again on May 28, 1926, and the amount was $624.40, and again on June 23, 1927, and the amount was $886.60.

Mr. Boone also asked me to show my bank statement for the month of November, 1927, I now have such statement here and tender it to Mr. Boone.

Mr. Boone asked me if I got the $12,000.00 proceeds on trust check No. 154, with the inference that I got it, and I will say that it has been developed at that time the bank had in its possession the deposit slip for that $12,000.00 item, written in the handwriting of G. W. Peckham, whereby G. W. Peckham got credit for $12,000.00, and the testimony of Mr. Lambert so shows.

The next item was a group of checks in Exhibits 51 and 98, which George Peckham had given me, offered by Mr. Boone and this is my explanation of those checks and all of the checks.

Mr. Rogers:
We offer it in evidence, Defendant's Exhibit 177.

(Marked "Defendant's Exhibit 177" as follows:)

1834 DEFENDANT'S EXHIBIT 177.

Exhibit Explaining Checks of G. W. Peckham turned over to E. E. Scannell, and Checks of E. E. Scannell in Explanation Attached.

D-Exhibit #51:

		Peckham Payments to Scannell.	Scannell Payments to Peckham.
6-27-23	George Peckham and I used to hunt and fish together a great deal, and this is *probably* a payment on something of this sort	25.00	

D-Exhibit #52:

8-30-23	I think this check is part of traveling expense to Seattle, Portland, San Francisco and Los Angeles, relative to details and clerical end of the organization of Tolowa Royalties, Inc.	229.40	

D-Exhibit 53:

11-24-23	There was considerable expense attached to the detail work of organizing and getting our connections working on Tolowa	400.00	

Exhibit 54:

12- 8-25	and I believe these checks are a part of the expense on this detail work which I handled. I believe these checks have to do with that expense	350.00	

D-Exhibit #55:

2-20-24	"Bowden Interest sold to Shaw."	651.83	500.00

I am unable to definitely recognize this deal from the information given on Geo. Peckham's check. However, from my tax return I find I had an interest in Maer-Staniforth lease which cost me $500.00. When making up the analysis of George Peckham's personal checks around this date I noticed that:

On February 16, 1924, Geo. Peckham issued his personal check to A. F. Bowden for $2500.00 on which was notation "Part Purchase Price 1/16 interest 20 acres, Lot 14, Block 27 Am Tribune Colony Land, Archer County, Texas." which was the Maer-Staniforth Lease.

February 21, 1924, George Peckham issued his check to I. C. Scales for $500.00 on which was written "Com. on Int. Lot 14, Blk. 27, Archer Co. sold to Shaw."

February 21, 1924, George Peckham gave B. L. Fain his check for $1024.43 on which was written "Bowden Int. sold to Shaw."

February 21, 1924, George Peckham gave his check to W. H. Peckham for $3661.84 on which was written "Bal. Due on Shaw deal" and on the same date his check for $1000.00.

1836 February 23 he issued me his check for $651.83, marked "Bowden Int. to Shaw." So I think this is the Maer-Staniforth lease in which I invested $500.00. George Peckham's tax return and Memorandum Record, in possession of City National Bank, have more information on George Peckham than I, and they are in position to give further information, if material.

In this connection, the records show that George Peckham got Wichita Royalty Company's check #160 for $2500.00 on February 11, 1924, for the option on Maer-Staniforth 20 acres in Archer County, which was E. 1/2 of Lot 14, Blk. 27 American Tribune New Colony lands, and on February 16, 1924, gave his check to A. F. Bowden

for $2500.00 as part of purchase price for 1/16 interest in Lot 14, Blk. 27 Am. Tribune lands. On this same day, February 16, 1924, on our CRM #58 George Peckham returned to WRCo the $2500.00 he got on Wichita Royalty Co. check #160.

On February 21 George Peckham paid I. C. Scales $500.00 as "Commission on interest in Lot 14, Blk. 27 Archer Co., sold to Bert Shaw," showing that the sale price of this interest was at least $10,000.00. Out of the sale price, on February 21, he paid B. L. Fain $1024.43; he paid Bill Peckham $1000.00 and $3661.84 and me $651.83 on February 23. The conclusion naturally follows that he saw a substantial profit in the deal and returned the company money and put up the money himself.

1837

D-Exhibit 56:

2-21-24	"Netherton Lease." I find I had an interest in the Netherton Lease, sold to New Berry. My cost was $30.00, Profit $20.00	50.00	30.00

D-Exhibit #57:

2- 2-24 &	"Tonkawa Deal." I put up my check for $1000.00 and these two items are the profit on my interest in this property	797.50	1000.00

Exhibit 59:

4-15-24	I think this is the interest which went to the National Royalty Company, and was litigated over a long period	270.00	

D-Exhibit #58:

3-19-24 &	This money ($2000.00) is return of investment in the L. F. Wilson Royalty	2000.00	2000.00

Exhibit 60:

Record previous trial, which relates that I borrowed $2000.00 from M. Clifford of the Security National Bank to put into this deal and reported $880.00 profit on my tax return for 1924. Analysis of Peckham's checks shows that March 7, 1924, the initial payment of $20,000.00 was made to L. F. Wilson. In the deposit of $5400.00 on March 10 to Ge. Peckham's account there is an item of $400.00, three $1000.00 items, and one for $2000.00, and I am of the opinion this item is my $2000.00 cashier's check. The evidence disclosed in this trial shows Peckham paid $100,000 cash and $50,000 out of oil for the Wilson Royalty and sold it for $189,000 and $50,000 oil. I had 2% interest and should have received $1780.00 profit on my investment.

D-Exhibit #51:

1-24-25 Probably Social. We used to have a little get-together among friends occasionally 80.00

D-Exhibit #63:

2-16-25 Have requested Perkins-Timberlake to see if this item went on my account, or if I purchased something. I am

of the opinion this was money won and I just paid it on my account with them 50.35

D-Exhibits 62, 64, 65, 66, 67, 68, 69, 70, 71, 72:

2-14-25 to 10-31-25 Tolowa Royalty Inc. Salary checks. George Peckham as President was to receive 10% of the Capital Stock, as sold. His remuneration was to come in stock and he paid my salary in cash. George Peckham was trustee with a declaration of Trust called Mid-Continent Royalty Co., recorded in Vol. 186, pages 625-8, Feb. 27, 1922, Wichita County Records, copy of which is furnished. From this came Tolowa Royalty, Inc., now Wotola Royalty Corporation. I handled all details on these companies until June, 1933, when the bank pressed Fain so hard on his personal obligations it was necessary for me to either drop the Wichita Royalty litigation or resign. 100.00 100.00 100.00 100.00 100.00 100.00 100.00 100.00 100.00 100.00

D-Exhibit #76:

6-15-25 Check made to cash, indorsed by E. E. Scannell, cleared through City National Bank. Probably George Peckham asked me to go down and get this money for him, or maybe a cashier's check. We find in analyzing Peckham's 1000.00

checks many instances where he sent his office girl to cash large checks for him. I would not want to believe that he gave these girls these amounts of money, and I didn't get this. George used to play in some pretty large games and probably needed the cash, and this time he asked me to go get it for him. Had check been mine it would have been made to me as these others were, and said what it was for. George lived three years after this transaction, and if he didn't get the money I know I would not have been working for him.

Mr. Harrell knew George Peckham as intimately as I did. He was Peckham's banker, confidential adviser and partner. I was Peckham's employee and never forgot that fact, which is one reason I have always accounted for our friendship. I kept my place, tended to my own business, and he liked me for that reason.

D-Exhibit:

7- 7-25 To G. W. Peckham, indorsed by G. W. Peckham, cleared 7-7-25. Notation "Int. in Street & Raywell." This is the well drilled on J. Pointevent Survey and was a dry hole 600.00

D-Exhibit:

10-20-25	To G. W. Peckham—indorsed by G. W. Peckham, cleared 10-26-25—Notation "Vernon" The above two checks are for my interest in the cost of a well drilled on the Vernon Royalty, J. Pointevent Survey, page.... this testimony.		260.12

D-Exhibit:

10-28-26	My check to G. W. Peckham, indorsed by him and cleared 10-31-26, in amount of	$1170.00	1170.00
	This shows to be my investment in the Wheeler County deal. On January 25, 1927, I received a check from G. W. Peckham Def. Ex. for $1170.-00 marked "On Wheeler County Royalties," and on November 10, 1926, a check for $600.00 from G. W. Peckham marked "Profit on Wheeler County Royalties" indicating my profit was this amount. Page ..... On pages ..... of this record with reference to purchase and sales of the Wheeler County Royalties, Peckham's record shows "Bought Wheeler County Royalties for $44,800.	600.00	
	"Webb Gray Co.	5,600.00	
	"Sec. 47 Johnson Wheeler Co.	4,000.00	
	"Sec. 54 Noel Wheeler Co.	5,000.00	
	"Sec. 57 Borden (Deed says paid $1000.00)	8,400.00	

"Sec. 43 Hill-Koons	2,000.00
"Sec. 44 Walker	4,000.00
"Sec. 45 Plummer	8,000.00
"Sec. 12 Company	8,000.00
Cost	$45,000.00

On Section 57 Borden, Peckham shows he paid $8400.00 while the deed shows he paid $1000.00 (page ....), therefore, his cost was $7400.00 less than his book shows. Then, too, he sold an interest to C. E. Morrison which would make his receipts in excess of $52,500 by the amount Morrison paid, which, as near as we can figure, was $7500.00, and brings his receipts from sales up to $60,000 before selling to Wichita Roy. Co. to whom his book states "sold balance to Wichita Roy. Co. $10,000 which is exact cost." His sales, according to his record, were

Tolowa	$30,500.00
Joe Art	1,000.00
J. T. Harrell	1,000.00
United	20,000.00
	$52,000.00
Sales not shown on Peckham's record C. E. Morrison	7,500.00
	$60,000.00
Sale to Wichita Royalty Co.	10,000.00
	$70,000.00

My figuring is that he had a gross profit prior to sale to Wichita Roy. Co. of $15,000.00. Deducting my $600.00 profit and Fain's $6500.00 commission from this gross profit left him a net profit of $7900.00 and he still had the Wichita Royalty Co. interest which he sold them for $10,000.00. Peckham admits in his record his "profit was $10,600."

Exhibit:
9-10-27 To G. W. Peckham, indorsed by G. W. Peckham, cleared 9-24-27 ..... 24.60

Exhibit:
11-14-27 To G. W. Peckham—indorsed by G. W. Peckham, cleared 11-17-27 ..... 50.00

Exhibit:
9-27 To G. W. Peckham—indorsed by G. W. Peckham—cleared 9-24-27 ..... 13.20

Exhibit:
10-13-27 G. W. Peckham—indorsed G. W. Peckham—cleared 9-24-27 ..... 35.00

Exhibit:
2-19-25 Check issued to G. W. Peckham, indorsed by G. W. Peckham—cleared 2-19-25 ..... 2.00

Exhibit:
1- 5-29 G. W. Peckham to E. E. Scannell refer to my check Jan. 7, 1929, to R. R. Robertson for $300.00, on which is notation "Wilbarger lease, as per letter 12-22-28" "Dry Hole" The letter is attached from R. R. Robertson. George had half of my interest 150.00 300.00

Exhibit:

9-15-25	W. H. Peckham, indorsement the same—cleared 9-16-25		700.00
		$9704.08	$6684.92

George Peckham does not owe me anything and I do not owe him anything.

Def. Exhibit 140, pages .... Pl. Exhibit 162, page ...., Wichita Roy. Co. check #237 dated July 2, 1924, payable to Security Nat'l Bank, for $11000.00 paid 7-3-24. On July 2, 1924, George Peckham deposited a check for $11000.00 and a check for $321.82 in the City National Bank. Examination of the deposit slip shows that both items were checks, indicating that Peckham got a cashier's check for $11,000.00 at the Security National Bank on July 2, 1924, and brought it back to the City National Bank and deposited it in his account. On the following morning, July 3, 1924, our check #237 reached the City National Bank through the clearing house and was charged to the Wichita Royalty Co. account	$11000.00
Pl. Exhibit 161—page ...., Wichita Roy. Co. check #246 dated July 24, 1924, payable to Security National Bank for $10,000.00, was paid July 26, 1924, by the City National Bank. On July 25, George Peckham deposited a check in the City National Bank for $10,000.00	10000.00

1845 It is evident that Peckham, on July 25th, took the check to the Security National Bank, got a cashier's check, came back to the City National Bank and deposited it to his account. On July 26th the Com-

pany's check reached the City National Bank through the clearing house and was charged to our account and canceled. Because of my friendship for Geo. Peckham I have always soft-pedaled his personal actions, except for spontaneous outbursts when counsel for the bank and Harrell have sought to build a case against me. But since Mr. Boone has, at Mr. Harrell's direction, inferred that I got this money, it is time for a little plain talk on what I know of the history of this J. H. White transaction.

In the beginning R. R. Robertson, B. L. Fain and George Peckham acquired the lease on the White land held by W. R. Ross, carrying Ross for an interest. Then they sold a half interest to Murchison-Fain who agreed to drill it. Several wells were drilled but the lease was not much good, so it was sold to J. H. White, the land owner, (P. E. 165, page ....). In the meantime J. I. Staley had acquired an interest from what Fain had left and George Peckham sold his interest to the Wichita Royalty Company for $21,000.00. A short time previous to the sale by Peckham of his interest to Wichita Royalty Company, which was July 2, 1924, George Peckham lost in excess of $20,000.00 gambling. The following morning
1846 when the game ended George broke down. He asked that a little time be given him to sell some stuff to get the money to pay off. Witnesses are available to substantiate this. Wichita Royalty Company had in excess of $11,000.00 on hand and this amount was paid Peckham for the 46/384 leasehold he owned.

On July 25, 1924, the day after the second check #246 for the amount of $10,000.00 was drawn, Geo. Peckham for the Trust borrowed from the City National Bank $15,000.00 (Page .....) which entitled trust check #246 to be paid on July 26th. Mr. Harrell testified that frequently inquiry was made as to what loans for $15,000.00 and $25,000.00 dollars were to be used for. In following the analysis of Geo. Peckham's check, one notes the payment of this loss subsequent to the date the first trust check was given and in Peckham's checks one check was

shown, on the corner of which was written that it was the last payment on this deal. George Peckham was the only one interested in the White lease that came out with a profit.

The Witness:

Inquiry was also made of me concerning transactions between me and G. W. Peckham, in the purchase of vacant lots in the Marlborough Addition. I have worked out a schedule of my explanation in respect to those transactions, and have a detail of checks supporting the payments that I made. I have the checks and here
1847 and now exhibit them to counsel. And I also have this explanation.

Mr. Rogers:

We offer the instrument in evidence, Defendant's Exhibit 178.

DEFENDANT'S EXHIBIT 178.

Personal checks attached of E. E. Scannell, Given on Marlborough Addition Lots.

Exhibit 74:

3-29-26	To Marlborough Addition—so indorsed —cleared by Security National Bank 4-5-26—Notation "10 Lots in Marlborough Addition."	400.00
3-31-26	To G. W. Peckham, indorsed by G. W. Peckham, cleared by Security National Bank 4-3-26 Notation "Return of half of cash payment on Lots in Marlboro."	200.00
4-28-26	To Marlboro Addition, indorsed "Credit Account of Marlborough Addition."—cleared my account Security National Bank 5-4-26" Notation on check "Payment on 10 lots."	159.00

Exhibit 75—$79.09:

5-28-26 To Marlborough Addition—indorsed Marlborough Addition by G. W. Peckham—paid 6-1-26, my account Security Nat'l Bank 158.17

Exhibit 94—$974.15:

6-15-26 Marlborough Addition—indorsed Marlborough Addition by G. W. Peckham—Cleared my acct. Security National Bank 6-16-26—Notation "Final Payment Lots 1 and 2, Block 7, Marlborough Addition" 974.15

Exhibit 77—$47.19:

6-28-26 Marlborough Addition—indorsed Marlborough Addition by G. W. Peckham—cleared 6-28-26. Notation "Payment on Lots 3, 4, 5, 6, Block 7 and 4, 5, 6, & 7, Block 6, Marlborough Addition. $100.00 Principal, $25.84 Interest 125.84

Exhibit 95—$821.97:

6-29-26 To Marlborough Addition—indorsed Marlborough Addition by G. W. Peckham—cleared 7-2-26—Notation "Paving on lots 1 & 2, Block 7" 821.97

Exhibit 79——$45.95:

7-31-26 To Marlborough Addition—indorsed Marlborough Addition by G. W. Peckham—cleared 8-2-26—Notation "Payment on 8 lots Marlborough Addition—$100 payment $25.20 Interest" 125.20

Exhibit 80—$179.19:

7-31-26 To Marlborough Addition—Indorsed Marlborough Addition by G. W. Peckham, cleared 8-2-26—Notation "Paving 8 lots Marlborough Addition, Peck-

ham 179.19, Scannell $298.65." Showing Scannell at least paying his part in every instance 477.84

9-28-26 To Marlborough Addition—indorsed same, by G. W. Peckham, cleared 10-4-26. Shown on Marlborough Books 155.65

Exhibit 81—$93.40:

9-28-26 Marlborough Addition—indorsed Marlborough Addition by G. W. Peckham—cleared 10-4-26 ..... 93.40

Shown on Marlborough Books.

Exhibit 82—$46.20:

11-10-26 Marlborough Addition—indorsed by Marlborough Addition by G. W. Peckham and paid Nov. 12—Notation "Payment on Lots" 123.20

Exhibit 86—$137.85:

1-25-27 To Marlborough Addition—indorsed by same, by G. W. Peckham—cleared 1-26-27 ..... 357.60

4-14-27 To Marlborough Addition—indorsed "Marlborough Addition E." City National Bank, Wichita Falls (Rubber Stamp)—Paid 4-15-27. Notation "Lots in Marlborough Addition" 354.80

Exhibit 92—$200.00:

10- 3-27 To Marlborough Addition—indorsed Marlborough Addition in G. W. Peckham's handwriting—cleared 10-4-27 .. 200.00

Exhibit 90—$147.24:

10- 1-27 To Marlborough Addition—indorsed by same in G. W. Peckham's handwriting. Cleared 10-4-27. Notation "3 Payments on 8 Lots in Marlborough, and interest to date" 392.64

3-21-28 To Marlborough Addition—indorsed Marlborough Addition in G. W. Peckham's handwriting—cleared 3-22-28—Notation "Payment in full, Lot 4, north half 5 Block 7, Marlborough Addition." Int. 78.22 ..... 978.22

Exhibit 93—$403.63:

3-21-28 Marlborough Addition—indorsed Marlborough Addition in handwriting of G. W. Peckham. Cleared 3-22-28—Notation "Payments on Lots in Marlborough. Principal 406.25, Interest 61.75, paving 388.24, interest on paving 155.29. Tax 133.83, Principal paid $125.00 ..... 1020.36

8- 6-28 To Marlborough Addition—indorsed Marlborough Addition by L. L. Sellers, cleared 8-14-28. Notation "Abstract Lot 7, Block 6" 3.00

7- 8-29 To Marlborough Addition—indorsed Marlborough Addition by L. L. Sellers—cleared 4-13-29. Notation "Payments on lots in Marlborough Addn." 500.00

1- 9-30 To Texas Investment Company—indorsed by same, by L. L. Sellers—cleared 1-13-30. "Interest" 60.47

7-29-30 To Texas Investment Co. Draft on S. N. B. W. F. Cleared 7-30-30. Notation "1929 Taxes Marlborough Lots" .. 62.76

Total checks offered in exhibits by City Nat'l Bank as payments made by G. W. Peckham to E. E. Scannell on Marlborough Group 3746.00

Total canceled checks offered by E. E. Scannell pertaining to Marlborough Payments, paid either to Marlborough or G. W. Peckham 7754.27

Total payments made by E. E. Scannell to Marlborough Addition, as reflected by Marlborough Books, kept by J. T. Harrell in the City Nat'l Bank, in their possession and available for their reference at all times for checking this account $190.04

Canceled checks produced by E. E. Scannell, not reflected by Marlborough Books, itemized:

3-31-26 G. W. Peckham—"Return of half first payment on lots in Marlborough" 200.00

8- 6-28 Marlborough Addition—"Abstract lot 7, Blk. 6" 3.00

7- 8-29 Marlborough Addition—indorsed Marlborough Addition by L. L. Sellers—Cleared 4-13-29 Notation "Payments on lots in Marlborough" 500.00

Payments credited on Marlborough Books as made by E. E. Scannell, for which checks were not furnished by Scannell:

1-28-28 Payment by E. E. Scannell 125.00

12- 5-28 Payment by E. E. Scannell, Scannell-Totzke Abst. 3.50

7-20-29 Payment by E. E. Scannell 1009.87

Summary:

Total checks of G. W. Peckham—that explanation is asked for per list furnished by City National Bank, Exhibits #51 to 98, inclusive (Refer to Page .... this record) $35,318.10

Total canceled checks furnished by E. E. Scannell in explanation exhibits 51 to 98, refer to pages .... to .... this record $38,081.38

The effect of this schedule is that George Peckham owes me nothing and I owe him nothing.

The Witness:

I was likewise asked concerning payments received by me from G. W. Peckham in the construction of his house in the Marlborough Addition; I have analyzed that and have the canceled checks whereby I paid for
1853 the building of that house in the amount shown by this exhibit.

Mr. Rogers:

We offer the exhibit in evidence.

DEFENDANT'S EXHIBIT 179.

Exhibit Tracing Payments of G. W. Peckham's House at 3200 Peckham. Checks issued by E. E. Scannell as follows:

D-Exhibit #78:

7-26-26 To W. H. Allen "Advance on house" indorsed by W. H. Allen and Sorey & Vohlberg, signed by E. E. Scannell .. $490.00

Exhibit #83:

8-31-26 To credit of G. W. Peckham. No indorsements. On August 30 I deposited George Peckham's check for $8100.00 along with his salary check #529 for $400.00, indorsed G. W. Peckham by E. E. Scannell, making deposit of $8500.00. See deposit slip and bank statement, page .... of the record discussing this payment, as well as foregoing and subsequent pages. Peckham's check for $8100.00 was not good so I deposited $4250.00 of the $8100.00

	back to his account. Deposit shows initial of C. E. Basham. Check canceled 8-31-26 and charged to my account. My bank statements of my account with the City National Bank are submitted herewith. There is no shortage whatever	4250.00
9- 3-26	To W. H. Allen, indorsed by W. H. Allen and canceled Sept. 7, 1926. Check marked "Payment on house in Marlborough, per order T. L. Sorey"	4250.00
Exhibit 84:		
10-18-26	To W. H. Allen, indorsed by W. H. Allen and "To apply on contract house in Marlborough." Canceled Oct. 19, 1926. See bank statement	4250.00
Exhibit 96:		
11-10-26	To W. H. Allen, indorsed by W. H. Allen, canceled Nov. 15, 1926, marked "Payment on house in Marlborough" ..	2500.00
Exhibit 97:		
11-24-26	To W. H. Allen, indorsed by W. H. Allen, canceled Nov. 26, "Payment on house in Marlborough"	1750.00
Exhibit 85:		
12- 9-26	To Geo. F. Preston, indorsed by Geo. F. Preston, canceled 12-13-26, marked "Per contract on landscape work on Marlborough home"	447.65
1-17-27	To W. H. Allen, indorsed by W. H. Allen, paid 1-18-27, marked "Payment on house in Marlborough"	1500.00

Exhibit 87:

2- 7-27 To Geo. F. Preston, indorsed by Geo. F. Preston, canceled 2-8-27, notation "Payment in full for landscape work" 175.00

Exhibit 98:

2-19-27 To Sorey & Volberg, and so indorsed, canceled 2-29-27, "Balance due on Architect Fees on home in Marlboro" drawn on my Security National Bank account 210.00

2-19-27 To W. H. Allen, indorsed by W. H. Allen and Long-Bell Lumber Co.—City National Bank stamp canceled 2-25-27, Security National Bank account. This check and the one mentioned just above (410.00) make up Peckham's check for $4370.40, which I received from him and deposited in my account Feb. 20, 1927. This is the amount Mr. Boone claims was short, which he discusses in connection with Exhibit 109. There is no shortage 4150.40

Total checks handled through my account shown above on Geo. Peckham's home $23,983.05

Exhibit 88:

2-12-27 To Geo. F. Preston, indorsed Geo. F. Preston, cleared through Security National Bank 2-12-27 Notation "Payment on tree planting in Marlborough." Geo. P. Paid $27.00, C. C. Parfet $54.00, H. C. Richardsin paid a little and I think DeMontel a small amount. Marlborough addition paid nothing, but received benefit from money we spent in improving our property $207.50

Total of Geo. Peckham's checks inquired about on Marlborough house, per exhibits $22,110.05

Total payments made by E. E. Scannell on Marlborough house transaction including the item of $207.50 on trees ...$24,190.55

The effect of this schedule is that George Peckham owes me nothing and I do not owe him anything.

Have paid out more than you asked about, Mr. Boone, but know accounts balance.

The Witness:

I have prepared an analysis of dividends paid by Wichita Royalty Company to the stockholders, showing the dates of the payment and the percent of payments. Those paid by George Peckham and those paid previous to the time he came in, I found during the time George Peckham was trustee he paid a total of ninetee.. percent out of a total of one hundred and thirteen percent, providing you give him credit for the dividend paid on January 15, 1923, and all stock of record December 31, 1922, and which was, of course, declared by the former trustee.

Defendant's Exhibit 109 is a deed from me to Peckham, my explanation is—the deed from Scannell and wife to George Peckham for $13,500.00 cash and $12,000.00 in notes; the deed is dated February 23, 1927. The
1857 notes went to the Empire Mortgage Company on April 20, 1927, and on April 23, 1927, George Peckham deposited $12,000.00 in his personal account, which is probably the money on the note. The deed shows that George Peckham was borrowing at least fifty percent of the cost on his house.

Suggestion was also made in the record as to the lack of correspondence betwen the trust records and the bank records with respect to cash; it is evident that an effort was made to reconcile our books with the deposit account of the bank. Our bank statement from the City National Bank shows our deposit balance on December 31 was $1,-

902.30, and our books showed on that date, $950.80, showing there was $951.42 in checks outstanding that had not reached the bank. Our records showed these checks were Nos. 860, for $400.00; No. 867 for $33.50, and 868 for $400.00, and there was a number of old outstanding dividend checks which amounted to $117.92, which made a total of $951.42 in floating checks. Among the one thousand three hundred stockholders scattered over the United States and foreign countries, it is my testimony that some dividend checks mailed to them in former years had not cleared, but the books and records of the Wichita Royalty Company showed definitely the payees and those checks outstanding, and the amounts.

I was severely cross examined with respect to the Lillybridge matter, with drawing certain moneys from the bank for the reasons therein stated, I have an analysis of the handling of those funds, and I exhibit to opposing counsel the deposit slips to the credit of Wichita
1858 Royalty Company corresponding with the collector of Internal Revenue receipts, a letter from the collector, a copy of the letter to him, and an adjustment of the controversy existing at that time between the Wichita Royalty Company and the collector's department. I was carrying on the negotiations for the royalty company under the direction of Mr. Peckham. This is an analysis of the receipt of those funds and the disbursement of them, it refers to the cash memos, and the books and records of the Wichita Royalty Company support this analysis, which is now offered in evidence.

Mr. Rogers:

Instrument marked "Defendant's Exhibit 180."

DEFENDANT'S EXHIBIT 180.

(Exhibited to opposing counsel in support of former testimony).

In regard to the Lillibridge Matters—Pages .... to ....

Our correspondence file is attached.

Exhibit 103 and 104. Referring to our Ledger 1926—E. E. Scannell—salary advances.

	Debit	
1-16-26	See check No. 462	$1200.00
1-18-26	See Check No. 463	300.00
1-19-26	See Check No. 464	400.00
1-21-26	Cash Memo. No. 155	3287.22
	Credit	5187.22
	Credit	
	2-2-26 See Cash Memo. No. 157	700.00
1859	2-10-26 See Cash Memo. No. 158	1200.00
	2-10-26 See Cash Memo	3287.22
		5187.22

Reference is made to the two deposit slips attached, which show when and how this money was returned to the Banks.

2-2-26	Deposited in Security National Bank. Deposit Slip reads "E. E. Scannell $300.00" and "E. E. Scannell $400.00."	700.00
2-10-26	Deposited City National Bank: "Transfer Fee $2.25," "E. E. Scannell $1200.00," "E. E Scannell, Treasurer, $3287.22," and "Oil Runs $2593.93."	7083.40

The Witness:

I was asked in regard to paying Cleo Bowers for making some records, which was for copying G. W. Peckham's check. She also took the deposition of E. A. Deaton, she is a Court reporter in the 78th District Court, this is what she charged and this is what I paid.

Mr. Rogers:

We offer it in evidence, Defendant's Exhibit 181.

1860 DEFENDANT'S EXHIBIT 181.

Wichita Royalty Company, Wichita Falls, Texas.

February 13, 1937.

Miss Cleo Bowers,
Court Reporter 78th District,
Wichita Falls, Texas.

Dear Miss Cleo:

On the bottom of this letter will you please give the amounts and dates of payment approximately of the money paid you for making the transcript of George Peckham checks.

My record shows $150.00 on May 31, 1936 and then on or about June 30th $50.00 and a few days thereafter another $10.00.

Thanking you for this favor, I am,

Yours very truly,
(Signed) E. E. SCANNELL.
404 Staley Bldg.

(On foot of same letter):

Mr. E. E. Scannell,
Wichita Royalty Co.,
City.

Dear Mr. Scannell:

Records in my file show, from copy of statement rendered Wichita Royalty Company on June 30, 1936, a check

for $150.00 dated June 17, 1936, credited thereon, and it shows the balance due of $60.00, which I have marked paid on July 2, 1936. It is my memory that this $60.00 was given to me in cash by you in the presence of Mr. G. L. Shapard.

I also have a note here that Mr. Guy Rogers paid Mr. Stewart $43.00 for photostats in connection with
1861 this deposition fee in the case of City Natl. Bk. vs. Wichita Royalty Company. February 15, 1937.

Yours truly,
(Signed) MRS. CLEO BOWERS ERWIN,
Court Reporter.

The Witness:

I have before me and exhibit to counsel, abstract of title showing the ownership of Block 44A, known as the property near the cemetery and support my testimony in respect to that transaction between me and George Peckham. I hand you certain letters in explanation of something Mr. Boone asked me, there is one in the record that I received from George Peckham in the amount of $150.00, which was his half interest in an interest I purchased in a lease in Wilbarger County, Texas, and these are the letters supporting that interest.

In an effort to accurately explain the inferences made in counsel's cross examination of me, I have spent much time in seeking to show the facts and what they are, and to account for these matters as best I could, so that the records might show I have accounted for all of the funds coming into my hands, and that neither George Peckham owes me anything, nor do I owe him anything.

Cross Examination.

By Mr. Boone:

Defendant's Exhibit 51 for $25.00, shown on my explaation, Defendant's Exhibit 177, I state, "George Peckham

and I used to hunt and fish together a great deal
1862 and this is probably payment on something of
that sort," But I do not have any supporting data on that. The next one is for $651.82, and my explanation is, "I am unable to definitely recognize this deal from the information given on George P kham's check, however, from my tax return, I have found that I had an interest in the Maer-Staniforth lease which cost me $500.00. When making up the analysis of George Peckham's personal checks around this date, I noticed that," then I recite details on it, I do not have any additional supporting data on that check. I have not been able to dig up the data on 1924, I do not have all of those checks, 1925 is where I begun.

Q. Now, then, the check of George Peckham to you for $80.00, that is the first one you have listed in 1925, Defendant's Exhibit 61?

Mr. Rogers:

Now, we renew the objection heretofore made for the purpose of the record. The objection being, as heretofore stated, when Mr. Boone first begun this inquiry on direct examination, that inquiry between the accounts of G. W. Peckham and E. E. Scannell personally and individually are immaterial to any matter in this case. No accounting is sought. It encumbers the record. It serves no useful purpose, and as stated, when these explanations were offered, they were but offered in the event that the Court should leave as evidence the original testimony offered upon cross examination by the bank and Mr. Harrell, as to matters personal between G. W. Peck-
1863 ham and E. E. Scannell, and our objection may be, under the agreemen., it has been, continued as to all of this.

The Witness:

I have given you all the explanation I can on that eighty dollars, the explanation on that is, "probably social."

"We used to have a little get-together among friends occasionally." I have also given you my explanation on the $1,000.00 item, Defendant's Exhibit 76, and I offer no other proof than my word that I did not get it. The check has my indorsement. If Mr. Peckham had not gotten his money on that check and accounted for it, he would not have kept me working for him very long; I do not know that it was given to the Wichita Royalty Company, because it hasn't any inference that it might have been a check to the Wichita Royalty Company. That is one of George Peckham's personal checks as far as I can see, would have no reference to the Wichita Royalty Company. As to June 15, 1926, during the time we are accusing George Peckham of taking some of the trust funds, I think the record bears out our contention in regard to George Peckham's action in this case—if the check had been made to the Wichita Royalty Company, I am quite sure the Wichita Royalty Company would have received
1864 credit for it. If the check was given to me and I indorsed it, I probably got the money on it and gave it back to him, in whatever form he wanted it. You will find in the record as you run through the analysis of George Peckham's check, were he gave many, many checks to his employees for large amounts of money to get cash, to go and get the money on, or something of that sort. That is an assumption of mine, but it is the best I can do, I know I did not get the money. I probably cashed the check for him and took the money back to him. The bank cashed this check and charged it to George Peckham's account, and I admit that I cashed the check, I did not get it personally. I have here the checks which pertain to our exhibit 177, ten of them, the first one is dated July 7, 1925, that is my interest in the Street and Ray well drilled on the Vernon land, in Wilbarger County. I got it from George Peckham and he and I were interested in the well and I think the title to the deed was in Ray and Massie or Street and Ray, I don't know which. Here is the Exhibit number on the check you asked me about. This check is in Exhibit 177, from me to George

Peckham. This shows what interest it was, and is just another one of the transactions between Mr. Peckham and myself, it did not have anything to do with the check you asked me about the other day. These next checks I hand you, October 25, 1925, is just another part of that same transaction, I have given you all the information I have in regard to them. I made what explanation I have to offer on each and every one of these and have
1865 given you the exhibit number where you refer to it. The next check for $1,170.00, you did not ask me about, it is not numbered as an exhibit, I will say in regard to that, that that is my interest in the Gray and Wheeler county land. You asked me about checks that came from George Peckham to me, and I gave you certain checks there which were from me to George Peckham. The check dated November 14, 1927, for $50.00, does not particularly pertain to any one you asked me about, except while George Peckham paid me money, you will find out I paid him some money. The one dated September 1927 for $13.20 does not have an exhibit number, on Oct. 13, 1927 I paid George Peckham $35.00. On February 19, 1925, I gave George Peckham a check for $2.00 revenue stamps on the Gambrell. On January 7, 1929 I gave R. R. Robertson a check for $300.00, that pertains to the $150.00 check that is in there, not to anything you asked me about. The check dated September 15, 1925, for $700.00, payable to W. H. Peckham, you did not ask me about that. As to why I did not get you supporting data on Exhibits 51, 52, 53, 55, 56, 57, 58, 61, 62, 64, 65, 66, 67, 68, 69, 70, 71, 72, and 78, I will say, that you know it works both ways. That is all I am trying to show, that I can account for and the moneys that I gave to George Peckham and the money that he gave to me, and I have attempted to show you as best I can what each amount was for, as near as I can tell. The data I have written out there is the best I can do.

I have handed you Exhibit 178, pertaining to
1866 my personal checks given the Marlborough Addition lots, beginning in March, 1926, going on down as late as July 29, 1930. I was interested in the

Marlborough Addition, went forward with my obligation; this is a summary of the whole thing, the notation is, "Payment on lots Marlborough, July 8, 1929." Payment credited to Marlborough books as made by E. E. Scannell, which checks were not furnished by E. E. Scannell, abstracts, etc. I will tell you what that is—you have not read the thing—in summarizing the thing, I show on here the checks which Marlborough show came to me. They have given me credit on their books for and I show in summarizing it, those which I have checks for which they do not show, and those which they show which I do not show a check for. And I have here the checks in support of it. I cannot identify some of the credits they have on their books and they do not give me credit for some of mine.

I have presented Exhibit 173, showing my salary account, checks given to me.

I have also presented Exhibit 180, a list of checks made payable to me, January 15, 1926, wherein check 462, for $1,200.00 was made payable to me. I testified the other day that this man was up here and he was a new man on the job, and I drew that money out, and redeposited it to the credit of the Wichita Royalty Company, the deposit slip shows a date 2-10-26. The collector did not state any specific amount to him at that time. On February 6, the amount was $974.69, and I drew out of the bank $1,200.00 on February 16, on January 18, $300.00, on January 19, $400.00. We did not know at that time how much the amount would be. My idea, under Mr. Peckham's direction, was to take the money out of the bank until such time as we could make an adjustment. On February 5, I don't know whether I knew how much they were claiming against the Wichita Royalty Company or not, I have produced a letter dated February 5, in regard to that matter. I have offered all the data I could find with reference to that matter. I drew out the bank on January 18 and 19, $700.00, according to Defendant's Exhibit 180, and de-

1867

posited in the bank on February 2, according to my deposit, $1,200.00.

Mr. Boone:
We offer the deposit slip in evidence.

DEFENDANT'S EXHIBIT 182.

Deposited in The Security National Bank, Wichita Falls, Texas By Wichita Royalty Co. Feb. 2, 1926 Checks as follows:

	E. E. Scannell	300.00
	E. E. Scannell	400.00
41	Total	700.00

Not negotiable Duplicate deposit ticket The Security National Bank By .....(?)

The Witness:
I would not say that I have presented all of the correspondence received from the treasury department, I ran across those letters in the files, and that is all I found.

1868 Mr. Boone:
We offer that in evidence, showing the date February 5.

DEFENDANT'S EXHIBIT 183.

Treasury Department

Internal Revenue Service.

Dallas, Texas.

Office of the Collector—February 5, 1925

Second District of Texas LT:LAP:MM

Wichita Royalty Company,
509 Security Nat'l Bank Bldg.,
Wichita Falls, Texas.

Sirs:

Your letter of February 1st, is acknowledged forwarding to this office an abatement claim in the amount of $974.69, which is to be considered in withholding the collection of the deficiency in corporation income taxes that was assessed against your company for the year of 1921 in the amount of $974.69. You request this office to accept the claim without bond for the reason that the taxes have been erroneously assessed.

Your attention is invited to Section 279(a) of the Revenue Act of 1924 which states that for a deficiency assessed under Section 274(d) of the Revenue Act of 1924, a claim for abatement may be filed accompanied by a bond. It, therefore, appears that the requirement in submitting a bond is mandatory.

1869 Please use the enclosed appropriate form in preparing, and returning the bond immediately.

Respectfully,

ENCL-LVR. (Signed) GEO. C. HOPKINS,
Collector LVR.

(in pencil) Withdrawal when?

The Witness:

I do not know whether I knew on February 6, the amount the government was claiming was $974.00 or not. I could not tell you why I waited until the 10th to redeposit this money. It was under Mr. Peckham's instructions.

Mr. Boone:

We offer the deposit slip in evidence.

DEFENDANT'S EXHIBIT 184.

City National Bank Deposited by Wichita Royalty Company Wichita Falls, Texas 2-10-1926 Checks as follows:

Transfer fees	2.25
E. E. Scannell	1200.00
E. E. Scannell tras	3287.22
Oil Runs	2593.93
	7083.40

The Witness:

If this file is not of any value to you, it is all right, if it is, th.. is the best I can do.

The indications are that we put up a bond on February 6. I put every cent of the money back in the bank, and the voucher checks show where it came out and the deposit slips show where it went back. It is not
1870 unusual for the government to make claims of that sort, against a man, and finally cut it down to a few dollars. Mr. Peckham was not in the habit of giving written instructions to his bookkeeper, therefore I do not have any written instructions as to the withdrawal of those funds. I have offered you all the data I have.

If I failed to list check No. 1,032, dated February 5, 1932, for $95.00, I will be glad to put it in. It was not my money, it was money paid out for expenses, the check was payable to me, it was for office supplies, salary, stationery, and so forth.

Check No. 1,050, 1936, dated June 29, for $541.92, was placed back in the bank, says it was transferred to cashier's check to avoid the possibility of garnishment by the City National Bank to be prorated to expense later, and it was deposited back in our account at the bank, on our cash memo No. 2470, First National Bank, October 9, 1926. I held it from May 29, until October 29. The next is check No. 1,051, May 29, 1936, for $2,860.56, deposited June 6, to our account in the First National Bank, it was taken from the bank for the same reason as 1,030. Check No. 1,052, $28.90, taken from the bank May 31, 1936, was paid out into the Stone Printing Company and to Railey and Heidrick Mapping Company, for postage and for expense of a trip to Graham and Archer City on taxes, $2.90 protest fees. Check No. 1,054, for $1,508.71, was a check that was converted into a cashier's check to avoid the possibility of garnishment, and de-
1871 posited back to our account on June 23, 1936. Between May 29, and June 6, there was no danger of garnishment. Check No. 1,055 for $563.47, converted into cashier's check, as the others, and re-deposited to the account on June 15, 1936, First National Bank. On June 5, 1936, the Wichita Royalty Company had an account in the First National Bank as shown by the statement. Check No. 1061 for $96.55, June 30, was an expense check, Railey Printing Company, $1.55; Stone Printing Company, $5.00; postage, $30.00; Cleo Bowers, $50.00. Cleo Bowers, $10.00. Check No. 1,064 July 6, 1936, is traveling expense where I made a trip to Oklahoma about some property that belongs to the Wichita Royalty Company. Check No. 1072, for $109.81 is converted into a cashier's check and I still have that. I have two cashier's checks now, I will get the amount of those for you, will make a list of each of the checks I have, I can do that in a few minutes.

Re-Cross Examiantion.

By Mr. Humphrey:

I have testified in detail about checks which George Peckham gave me, and which Peckham gave to the Royalty Company and the Royalty Company gave to Peckham, beginning in January, 1923, up to the time of George Peckham's death. In many cases, and particularly with reference to those that George Peckham gave to me, if I had had some of the information I now have, it would have been easier for me to find out. I made a statement here undertaking to detail the explanation of those
1872 checks.

George Peckham and I bought the Marlborough lots soon after the property was platted and subdivided. I bought those lots in good faith, as a speculation, hoping to make money out of them. If the other lots in the Marlborough Addition had been sold at a similar price to what I paid for those, that addition would have been a successful business venture, but the truth about the matter, I never was very hot on it. I bought some lots and spent a substantial amount of money, more than I should have

I have the income tax report of the Wichita Royalty Company, the last one, here it is. The report was rendered on the basis of a fiscal year instead of a calendar year, June 1, to May 31 of each year. The income tax report I hand you is May 31, 1936, I prepared it, and I think I swore to it as trustee. On that report I show the assets of the Wichita Royalty Company, the accounts receivable are $19,658.67, which consists of an item of $230.00 that is held in escrow in the First National Bank, pending the outcome of this suit, and $19,428.67, which is the Peckham claim, that W. H. Peckham declined to pay. I have a star showing that is in litigation. Cash on hand is $1,535.12. Notes receivable $2,000.00, there is also an indication showing that is in litigation, that is the money loaned the Texas Investment Company, two checks of $1,500.00 and $500.00, Stocks, $48,862.20, that is also one of

the items in litigation and the stock is in the Texas Investment Company. Oil and gas properties, per books and engineers valuation reports, analysis, $770,673.39, less depletion, $511,155.95, balance value of $259,-
1873 517.44. That is what that property is carried on the books at, and includes all of the oil and gas properties, no adjustment has been attempted to be made, it includes everything. I should have an indication there to show that it is in litigation. This item of $259,517.00 includes all of the real estate, but it makes no attempt to make any adjustment relative to this lawsuit, because I do not know what to do about it. I know that there should be an adjustment made, but I did not attempt to do it. The report shows notes payable, $22,000.00, that is, to the City National Bank, in this litigation. The income from oil and gas production was $4,416.17, that is income from those properties that were producing and is involved in this litigation. I show also a balance sheet at the close of business May 31, 1935, I show cash on hand, I show accounts receivable with a star showing that it is in litigation of $19,643.67; that is made up of George Peckham's claim against George Peckham's estate, and the $200.00 deposit. Notes receivable $2,000.00—that is payments I made from Wichita Royalty Company's account for the account of Marlborough Addition after I became trustee. The amount for stocks, $48,862.20, is the same stock in the investment company that was shown on the balance sheet of May 31, 1936, the oil and gas properties less depreciation, is a complete list of the same property as shown in the balance sheet, May 31, 1936, I think this includes all of the properties, including those which we in-
tend to repudiate, however, no attempt was made
1874 to make any adjustment, if adjustments were necessary to be made, because I did not know what to make. I took whatever position was necessary to take, that I could take, and then when the thing is finally adjusted, I will make the adjustments that are necessary. I signed and swore to this report in May, 1936, there was no attempt to make any statement to the

government that I did not think was proper, and if there is any errors the adjustment will be made. I swear to it as a true and correct statement, reflecting the property we had.

Mr. Humphrey:

We offer the report in evidence, Plaintiff's Exhibit 216.

PLAINTIFF'S EXHIBIT 216.

Return form marked "Duplicate" must be filed with this original return. Corporation Income and Excess-Profits Tax Return for Calendar Year 1935 or Fiscal Year Begun June 1, 1935, and ended May 31, 1936. Print Plainly Corporation's name and business address Wichita Royalty Company, Wichita Falls, Texas. Form 1120 Treasury Department Internal Revenue Service. Page 1 of Return. File Code ..... Serial Number ..... District.....

It is Essential, except where otherwise provided in the instructions, that this form be completely filled in irrespective of any statements, schedules, or reports submitted herewith. Date of organization June 1, 1920. Under laws of what State or County. Texas.

The Corporation's books are in care of E. E. Scannell, Located at Wichita Falls, Texas. Kind of business (in detail) Oil royalty business. Is this a Consolidated Return of Railroad Corporation? No. If so, of How Many Corporations? ..... If a Foreign Corporation, state Whether Resident or Nonresident .....; if Nonresident, State Amount of Income Excluded (instructions 33) From Gross Income, $..... Is the Corporation a Personal Holding Company Within the meaning of Section 351 of the Revenue Act of 1936? No. (If so, an additional return on form 1120 H must be filed.)

1875

Closing Balance Sheet

Wichita Royalty Company, Wichita Falls, Texas,

At the Close of Business May 31, 1936.

Assets.

*Accounts Receivable		$19,658.67
Cash on Hand		1,535.12
*Notes Receivable		2,000.00
*Stocks		48,862.20
Oil & Gas Properties—		
Per Books & Engineer's Valuation Reports (Analysis)	$770,673.39	
Less Depletion	511,155.95	259,517.44
Office Furniture (Less Depreciation)		213.86
		$331,787.29

1876

Liabilities.

Accounts Payable		$ 309.55
*Notes Payable		22,000.00
Nominal—		
Capital Stock Authorized	$1,000,000.00	
Capital Stock Unissued	185,085.00	814,915.00
Surplus	(—)	505,437.26
		331,787.29

*In Litigation.

1877 **Profit and Loss Statement.**

Wichita Royalty Company, Wichita Falls, Texas.

For the Fiscal Year Ended May 31, 1936.

Income—Oil & Gas Production		$4,416.77
Deductions—		
Office Supplies	$ 161.55	
Postage	19.00	
Clerical Expenses	650.00	
Maps, Prints Photostats	53.00	
Audits	500.00	
Telegraph and Telephone	35.67	
Traveling Expense	360.00	
Unclassified	2.90	
Legal Expense	1,395.55	
Depreciation Office Equipment	51.74	
Depletion @ 27½%	1,207.74	4,437.15
Net loss for period		$20.38

1878 **Analysis of Surplus.**

Wichita Royalty Company, Wichita Falls, Texas.

Return for the Fiscal Year Ended May 31, 1936.

Balance—May 31, 1935—Per books and prior return	(—)	$507,313.90
Adjustments—Per books		1,897.02
Additions—Net Loss for the period		20.38
Balance—May 31, 1936	(—)	505,437.26

1879 **Opening Balance Sheet.**

Wichita Royalty Company, Wichita Falls, Texas.

At the Close of Business May 31, 1935.

Assets.

Cash on Hand		$ 1.47
*Accounts Receivable		19,643.67
*Notes Receivable		2,000.00
*Stocks		48,862.20
Oil & Gas Properties—		
Per Books & Engineer's Valuation Reports (Analysis)	$770,673.39	
Less Depletion	509,948.21	260,725.18
Office Furniture—(Less Depreciation)		265.60
		$331,498.12

Liabilities.

Accounts Payable		1,987.02
*Notes Payable		22,000.00
Nominal—		
Capital Stock Authorized	$1,000,000.00	
Capital Stock Unissued	185,085.00	814,915.00
Surplus	(—)	507,313.90
		$331,498.12

*In Litigation.

1880 Affidavit (See Instruction 46).

We, the undersigned, president (or vice-president, or other principal officer) and treasurer (or assistant treas-

urer, or chief accounting officer) of the corporation for which this return is made, being severally duly sworn, each for himself deposes and says that this return (including its accompanying schedules and statements, if any) has been examined by him and is, to the best of his knowledge and belief, a true, correct, and complete return made in good faith, for the taxable year stated, pursuant to the Revenue Act of 1934 and the Regulations issued thereunder.

Sworn to and subscribed before me this 30 day of July, 1936.

....., Trustee.
(President or other principal officer.)

The Witness:

I have exhibited to you a report of the Wichita Royalty Company for the fiscal year beginning June 1, 1934, and ending May 31, 1935, income tax report made up under my oath, to the government of the United States, showing the income of that company during that year. It is a correct report. Accompanying the report I show a balance sheet of May 31, 1935, it is an exact copy. In this report I also show a balance sheet of May 31, 1934, in that balance sheet I show accounts payable $19,643.67, which includes the claim against the Peckham estate and another item of $200.00, that is accounts receivable. Then a $2,000.00 item, that represents the payment for the Wichita Royalty Company for the Marlborough Addition, after I was trustee. The stocks are the same as in the other report. Oil and gas properties, $770,673.38, less depletion, which is the same property that I had theretofore. I did not make any attempt to make any adjustment, because I didn't know what to do about it. I did show the Peckham claim is in litigation. I did show that the stocks in the Marlborough are in litigation. I did show the $2,000.00 item was in controversy. I did not show that the $22,000.00 note was in

1881

litigation, but it should be on there. I swore to the report.

Mr. Humphrey:
We offer it in evidence, Plaintiff's Exhibit 217.

PLAINTIFF'S EXHIBIT 217.

Form 1094 must be filed with this return Corporation Income and Excess-Profits Tax Return for Calendar Year 1934 or Fiscal year begun June 1, 1934, and ended May 31, 1935. Page 1 of Return.

1882 Form 1120 Treasury Department Internal Revenue Service. File Code ..... Serial Number ..... District ..... Print plainly corporation's name and business address. Wichita Royalty Company, Wichita Falls, Texas. It is essential except where otherwise provided, in the instructions, that this form be completely filled in irrespective of any statements, schedules, or reports submitted herewith.

Date of Organization June 1, 1920. Under the laws of what State or Country, Texas.

The Corporation's books are in care of E. E. Scannell. Located at Wichita Falls, Texas. Kind of business (in detail) Oil royalty business. Is this a Consolidated Return of Railroad Corporation? No. If so, How many Corporations? If a Foreign Corporation, state whether resident or non-resident .....; if non-resident, state amount of income excluded (instructions 33) from gross income, $..... Is the Corporation a personal holding company within the meaning of Section 351 of the Revenue Act of 1934? No. (If so, an additional return on Form 1120 H must be filed.)

Closing Balance Sheet

Wichita Royalty Company, Wichita Falls, Texas.

At the Close of Business May 31, 1935.

1883

Assets.

Cash on Hand		$ 1.47
*Accounts Receivable		19,643.67
*Notes Receivable		2,000.00
*Stocks		48,862.20
Oil & Gas Properties—		
Per Books & Engineer's Valuation Reports (Analysis)	$770,673.39	
Less Depletion	509,948.21	260,725.18
Office Furniture—(Less Depreciation)		265.60
		$331,498.12

Liabilities.

Accounts Payable		1,987.02
*Notes Payable		22,000.00
Nominal—		
Capital Stock Authorized	$1,000,000.00	
Capital Stock Unissued	185,085.00	814,915.00
Surplus	(—)	507,313.90
		$331,498.12

*In Litigation.

1884

Profit and Loss Statement.

Wichita Royalty Company, Wichita Falls, Texas.

For the Fiscal Year Ended May 31, 1935.

Income—Oil and Gas Production	$1,338.40

Deductions—		
Maps, Prints, photostats, etc.	5.50	
Office Supplies	22.60	
Printing, Stationery, etc.	251.00	
Postage	10.00	
Traveling Expense	341.50	
Telephone & Telegraph	8.40	
Unclassified	12.00	
Legal Expense	428.82	
Salaries Clerical & Executive...	1,150.00	
Depreciation on Office Fixtures..	51.74	
Depletion @ 275%	368.06	2,649.62
Net Loss for Period		1,311.22

1885 Analysis of Surplus.

Wichita Royalty Company, Wichita Falls, Texas.

Tax Return for the Fiscal Year Ended May 31, 1935.

Balance—May 31, 1934—Per Book and prior return	(—)	$506,002.68
Additions—Net loss for the period		1,311.22
Balance—May 31, 1935	(—)	507,313.90

1886 Opening Balance Sheet.

Wichita Royalty Company, Wichita Falls, Texas.

At the Close of Business May 31, 1934.

Assets.

Cash on Hand	$ 1.47
*Accounts Receivable	19,643.67
*Notes Receivable	2,000.00
*Stocks	48,862.20

Oil & Gas Properties—		
Per Books & Engineer's Valuation Reports (Analysis)	$770,673.39	
Less Depletion	509,580.15	261,093.24
Office Equipment—(Less Depreciation)		317.34
		$331,917.92

Liabilities.

Accounts Payable		$ 1,055.60
Notes Payable		22,000.00
Nominal—		
Capital Stock Authorized	$1,000,000.00	
Capital Stock Unissued	185,085.00	814,915.00
Surplus	(—)	506,002.68
		$331,917.92

*In Litigation.

Affidavit (See instruction 50).

(This affidavit same as affidavit appearing in Exhibit 216, except that the date differs, being November 21, 1935, on this return.)

1887 The Witness:

I hand you a copy of the report for the year ending May 31, 1933. Here is one ending May 31, 1934, showing the status of the Wichita Royalty Company account, the balance sheet as of May 31, 1934. It shows substantially the same as the other reports, shows the owned oil and gas properties in the amount of $770,673.39, less depletion. It includes the property we are seeking to repudiate, no effort to make any adjustment whatever, because I didn't know what to do. I merely show that the company is in litigation. I think this schedule of oil

and gas properties includes those properties which we now seek to repudiate, no attempt at any adjustment at all. In the balance sheet at the close of business May 31, 1933, I show practically the same facts, except I did show in 1933 oil and gas properties, per books, and engineers reports in litigation, no depletion figured on account of loss already sustained.

Mr. Humphrey:
We offer this in evidence.

PLAINTIFF'S EXHIBIT 218.

Form 1120A. Corporation Income and Excess Profits Tax Return, Internal Revenue Treasury Department, for Fiscal Year 1934. Fiscal Year begun June 1, 1933, and ended May 31, 1934. File this return not later than the Fifteenth Day of the Third month following the close of the Fiscal Year. Page 1 of Return. Print Plainly Corporations Name and Business Address. Wichita Royalty Co., Wichita Falls. File Code.... Serial Number.... District .... It is essential, except where otherwise provided in the instructions, that this form be completely filled in irrespective of any statements, or report submitted herewith. Kind of business Oil Royalty Company. Is this a consolidated return? No. If so, of how many corporations?.....

1888 Profit and Loss Statement.

Wichita Royalty Company, Wichita Falls, Texas.

For the Fiscal Year Ended May 31, 1934.

Income—		
Oil and Gas Production	$2,481.31	
Transfer Fee	.50	$2,481.81

Deductions—		
Office Rents	53.35	
Office Supplies	52.10	
Telephone & Telegraph	5.60	
Postage	26.00	
Federal Check Tax	.28	
Traveling Expense	148.50	
Legal Expense	523.26	
Salaries, Executive & Clerical	1,070.00	
Unclassified	21.00	
Depreciation	117.34	
Depletion at 27½%	682.36	$2,699.70
Net Loss for Fiscal Year Ended May 31, 1934		217.98

1889 Analysis of Surplus.

Wichita Royalty Company, Wichita Falls, Texas.

Tax Return for the Fiscal Year Ended May 31, 1934.

Balance—May 31, 1933—Per Books and prior return	(—)	$505,788.47
Adjustments—Adjustment to surplus from 1931 due to discovery small bank balance		3.77
Deduct—Net loss for the fiscal year		217.98
Balance—May 31, 1934	(—)	$506,002.68

1890 Closing Balance Sheet.

Wichita Royalty Company, Wichita Falls, Texas.

At the Close of Business May 31, 1934.

Assets.

Cash on Hand	$ 1.47
*Accounts Receivable	19,643.67
*Notes Receivable	2,000.00
*Stocks	48,862.20

Oil & Gas Properties—		
Per Books & Engineer's Valuation Reports (Analysis)	$770,673.39	
Less Depletion	509,580.15	261,093.24
Office Equipment—(Less Depreciation)		317.34
		$331,917.92

Liabilities.

Accounts Payable		$ 1,005.60
Notes Payable		22,000.00
Nominal—		
Capital Stock Authorized	$1,000,000.00	
Capital Stock Unissued	185,085.00	814,915.00
Surplus	(—)	506,002.68
		$331,917.92

*In Litigation.

1891 Opening Balance Sheet.

Wichita Royalty Company, Wichita Falls, Texas.

At the Close of Business May 31, 1933.

Assets.

Cash on Hand	$ 1.47
*Accounts Receivable	19,428.67
*Notes Receivable	2,000.00
*Stocks	48,862.20
*Oil & Gas Properties—Per Books & Engineer's Valuation Reports (Analysis)	770,673.39
Office Furniture—(Less Depreciation)	469.33
	$841,435.06

Liabilities.

Accounts Payable		1,410.74
*Notes Payable		22,000.00
†Depletion Reserve		508,897.79
Nominal—		
Capital Stock Authorized	$1,000,000.00	
Capital Stock Unissued	185,085.00	814,915.00
Surplus—May 31, 1933	(—)	505,788.47
		$841,435.06

*In Litigation.
†No Depletion figured account loss already sustained.

1892 Affidavit (See Instruction 53).

(Affidavit same as shown on Plaintiff's Exhibit 213, except for the date which is November 21, 1925, on this affidavit.)

The Witness:
I now hand you the report ended May 31, 1933, accompanying the report is a balance sheet, showing substantially the same facts as the other report. Showing oil and gas properties $770,673.39, less depletion, that does not show to be in litigation, however, it shows there was a litigation on the whole business.

Mr. Humphrey:
We offer it in evidence.

PLAINTIFF'S EXHIBIT 219.

Form 1020A.

Treasury Department,

Internal Revenue Service.

Corporation Income Tax Return for Fiscal Year 1933. Page 1 of Return. Fiscal Year Begun June 1, 1932, and ended May 31, 1933. File this return not later than the fifteenth day of the third month following the close of the fiscal year. File Code ..... Serial Number ..... District ..... Print plainly corporation's name and business address. Wichita Royalty Company, 1002 Staley Building, Wichita Falls, Texas. It is essential, except where otherwise provided in the Instructions, That this form be completely filled in irrespective of any statements, schedules, or reports submitted herewith..

Date of Organization June 1, 1920. Under the laws of what state or Country ..... The Corporation's Books are in care of E. E. Scannell, Trustee, located at Wichita Falls, Texas. Kind of Business Oil Royalties. Is this a consolidated Return of Two or More Corporations, No. If so, how many?.....

1893

Profit and Loss Statement.

Wichita Royalty Company, Wichita Falls, Texas.

For the Fiscal Year Ended May 31, 1933.

Income—Oil and Gas Production		$1,359.57
Expenses—		
Legal Advances	$ 357.48	
Office Supplies	85.00	
Salaries Executive & Clerical ..	2,400.00	2,842.43
Net Loss—For Fiscal Year ended May 31, 1933		1,482.86

Note: No depletion figured account loss already sustained.

1894 Analysis of Surplus.

Wichita Royalty Company, Wichita Falls, Texas.

Tax Return for the Fiscal Year Ended May 31, 1933.

Balance—May 31, 1932—Per Books and prior return	(—)	$504,305.61
Deduct—Net loss for the fiscal year ended May 31, 1933		1,482.86
Balance—May 31, 1933	(—)	505,788.47

1895 Closing Balance Sheet.

Wichita Royalty Company, Wichita Falls, Texas.

At the Close of Business May 31, 1933.

Assets.

Cash on Hand	$ 1.47
*Accounts Receivable	19,428.67
*Notes Receivable	2,000.00
*Stocks	48,862.20
Oil & Gas Properties—Per Books & Engineer's Valuation Reports (Analysis)	770,673.39
Office Furniture—(Less Depreciation)	469.33
	$841,435.06

Liabilities.

Accounts Payable	1,410.74
*Notes Payable	22,000.00

†Depletion Reserve		508,897.79
Nominal—		
Capital Stock Authorized	$1,000,000.00	
Capital Stock Unissued	185,085.00	814,915.00
Surplus—May 31, 1933	(—)	505,783.47
		$841,435.06

*In Litigation.
†No Depletion figured account loss already sustained.

1896 Opening Balance Sheet.

Wichita Royalty Company, Wichita Falls, Texas.

At the Close of Business May 31, 1932.

Assets.

Cash on Hand	$ 99.37
*Accounts Receivable	19,428.67
*Notes Receivable	2,000.00
*Stocks	48,862.20
Oil & Gas Properties—Per Books & Engineer's Valuation Reports (Analysis)	770,673.39
Office Furniture—(Less Depreciation)	469.33
	$841,532.96

Liabilities.

Accounts Payable	25.78
*Notes Payable	22,000.00
†Reserve for Depletion	508,897.79

Nominal—		
Capital Stock Authorized....	$1,000,000.00	
Capital Stock Unissued.....	185,085.00	814,915.00
Surplus—May 31, 1932	(—)	504,305.61
		$841,532.96

*In Litigation.
†No Depletion figured account loss already sustained.

1897

Affidavit.

We, the undersigned, president and treasurer of the corporation for which this return is made, being severally duly sworn, each for himself deposes and says that this return, including the accompanying schedules and statements, has been examined by him and is, to the best of his knowledge and belief, a true and complete return, made in good faith, for the taxable year stated, pursuant to the revenue act of 1932 and the Regulations issued thereunder.

....., Trustee.

Sworn to and subscribed before me this 1 day of July, 1933.

.....

The Witness:

The report of May 31, 1932, likewise contains a similar balance sheet, and likewise, it shows as assets of Wichita Royalty Company the various oil and gas properties that are now in litigation.

Mr. Humphrey:

We offer it in evidence, Plaintiff's Exhibit 220.

1898 PLAINTIFF'S EXHIBIT 220.

Form 1120A. Page 1 of Return.

Corporation Income Tax Return for Fiscal Year 1932.

Fiscal Year begun June 1, 1931, and ended May 31, 1932. File this return not later than the fifteenth day of the third month following the close of the fiscal year.

File Code..... Serial Number..... District .....

Print plainly Corporation's name and business address. Wichita Royalty Company, 1002 Staley Building, Wichita Falls, Texas.

Date of Organization June 1, 1920.

Under the laws of what State or Country .....

Kind of Business Oil Royalties. Is this a consolidated Return of Two or More Corporations? No. If so, how many? .....

Analysis of Surplus.

Wichita Royalty Company, Wichita Falls, Texas.

Tax Return for the Fiscal Year Ended May 31, 1932.

Balance—May 31, 1931—Per Books and prior return .....(—)		$501,686.21
Deduct—		
Net Loss for the Fiscal Year ended May 31, 1932.....	$ 448.58	
*Adjustment for Loss our interest in Porter Ranch, Archer County, Texas	2,170.82	2,619.40
Balance—May 31, 1932 .....(—)		$504,306.61

1899 Profit and Loss Statement.

Wichita Royalty Company, Wichita Falls, Texas.

For Fiscal Year Ended May 31, 1932.

Income—		
Lease Rental Income	$ 28.87	
Oil & Gas Production	3,800.64	$3,829.51
Expenses—		
Audits	290.51	
Gross Production Tax	12.89	
Legal Expenses	998.71	
Office Rent	250.00	
Office Supplies	20.70	
Postage	32.00	
Salaries, Executive & Clerical	2,612.00	
Telephone and Telegraph	2.78	
Unclassified	6.35	
Depreciation on office furniture	52.15	4,278.09
Net Loss—For Fiscal Year ended May 31, 1932		$448.58

Note: No depletion figured account Loss already sustained.

1900 Opening Balance Sheet.

Wichita Royalty Company, Wichita Falls, Texas.

At the Close of Business May 31, 1931.

Assets.

Cash in Banks	$ 53.50
Accounts Receivable	19,858.08
Notes Receivable	2,000.00

Lands	4,012.50
Stocks	48,862.20
Oil & Gas Properties	770,673.39
Office Furniture	521.48
	$345,981.15

Liabilities.

Accounts Payable		$ 12.89
Notes Payable		23,841.68
Reserve for Depletion		508,897.79
Nominal—		
Capital Stock Authorized	$1,000,000.00	
Capital Stock Unissued	185,085.00	814,915.00
Surplus—May 31, 1931	(—)	501,686.21
		$845,981.15

1901 Closing Balance Sheet.

Wichita Royalty Company, Wichita Falls, Texas.

At the Close of Business May 31, 1932.

Assets.

Cash on Hand	$ 99.37
*Accounts Receivable	19,428.67
*Notes Receivable	2,000.00
*Stocks	48,862.20
Oil & Gas Properties—Per Books & Engineer's Valuation Reports (Analysis)	770,673.39
Office Furniture—(Less Depreciation)	469.33
	$841,532.96

Liabilities.

Accounts Payable		25.78
*Notes Payable		22,000.00
†Reserve for Depletion		508,897.79
Nominal—		
Capital Stock Authorized	$1,000,000.00	
Capital Stock Unissued	185,085.00	814,915.00
Surplus—May 31, 1932	(—)	504,305.61
		$841,532.96

*In Litigation.
†No Depletion figured account loss already sustained.

1902

Affidavit.

(This affidavit the same as on Plaintiff's Exhibit 219, except for the date, which is July 1, 1932, on this affidavit; also this one is signed J. R. Terrill, Notary Public for Wichita County, Texas.)

The Witness:

I have handed you now the report ending May 31, 1931, that report shows oil and gas production, $6,975.00. It shows income from lease rentals and oil and gas production, $8,875.02, which is the income we collected off of those properties, such as the Grimshaw and the Stephens, I don't know which particular one. I list the J. B. Routon on the depletion report, we own the property, it just shows the operator. That gives the government an opportunity to check the royalty income with the lease owners. We list the royalty under the J. L. Anderson south pasture, also the royalty under the Grimshaw, also accompanying this list with the oil properties owned, give the depletion date. On the Grimshaw, we show the cost and depletion and the barrels that was produced up to May 31, 1931, that is pro-rated into the leases. This

report shows the Grimshaw royalty and produced 3,800 barrels of oil, it showed the reserve. It showed the Curtis Lane property, the J. B. Routon, J. L. Anderson south pasture, the Kunkle royalty, it shows as part of our assets the royalty interest in Callahan County. It showed the properties that George Peckham acquired in Gray and Wheeler counties, the cost of it. It showed the Ellis County properties in Oklahoma. It showed the Hartley County property, also the Pecos County property. It shows a balance sheet as at the close of business
1903 May 31, 1931. It includes in the balance sheet all oil and gas properties. This report, of this date, shows that the balance of our deposit in the City National Bank was $53.50—there was no controversy about that—I recognized that as correct. It showed that we owed the note of $22,000.00.

Mr. Humphrey:
We offer it in evidence, Plaintiff's Exhibit 221.

1904 PLAINTIFF'S EXHIBIT 221.

Form 1120A. Page 1 of Return.

Corporation Income Tax Return for Fiscal Year 1931.

Treasury Department, Internal Revenue Service.

Fiscal Year begun June 1, 1930, and ended May 31, 1931. File this return not later than the fifteenth day of the third month following the close of the fiscal year.

File Code..... Serial Number..... District .....

Print plainly Corporation's name and business address. Wichita Royalty Company, 1002 Staley Building, Wichita Falls, Texas.

Date of Organization June 1, 1920.

Under the laws of what State or Country .....

Kind of Business Oil Royalties. Is this a consolidated Return of Two or More Corporations? No. If so, how many? .....

Profit and Loss Statement.

Wichita Royalty Company, Wichita Falls, Texas.

For the Fiscal Year Ended May 31, 1931.

Income—		
Lease Rental Income	$ 155.26	
Oil & Gas Production	6,719.76	$6,875.02
Expenses—		
Business Subscriptions	$ 18.50	
Gross Production Taxes	40.34	
Interest Expense	205.17	
Legal Expense	2,902.25	
Office Rent	316.89	
Office Supplies, Stationery	44.70	
Postage	30.00	
Salaries, Executive and Clerical	4,311.00	
Telephone & Telegraph	32.00	
Unclassified Expense	13.75	
Depreciation & Fixtures—cost $579.42	57.94	
Depletion Sustained Per Schedule Attached	2,690.21	10,662.75
Net Loss—For Fiscal Year ended May 31, 1931		$3,787.73

Depletion Allowable.

Wichita Royalty Company, Wichita Falls, Texas, Tax Return for the Fiscal Year Ended May 31, 1931.

Property Name and Operator	Current Year Dollars	Barrels	Unit Rate	Current Depletion
J. A. Novotny—Prairie	649.08	524.34	1.29	676.50
J. W. See—Comar	15.11	10.31	6.89	43.46*
C. W. Coltry—Amerada	309.55	263.80	1.06	204.50*
Carmichael—Comar	64.82	56.57	1.06	69.96
Fred Beverlin—Comar	98.87	81.20	.96	77.95
J. B. Routon—Root	2.80	2.24	9.65	21.62
J. L. Anderson—Prairie	6.64	6.37	1.30	8.28
J. L. Anderson—Empire	70.30	65.93	2.56	3.33*
J. L. Anderson—Humble	27.40	25.77	2.38	61.33
Depletion on Basis Cost	$1,244.57	1,036.53		$1,156.83
West Texas—Meridian Pet. Co.	1.36	1.08	27½%	.37
Mann Hood—Lowry Oil Co.	11.56	12.91		3.18
D. M. Bishop—Waggoner Ref. Co.	6.93	6.41		1.90
Clay Wilson—H. A. O'Neil	18.23	18.91		5.01
S. M. Jameson—Priddy	11.25	10.70		3.10
A. J. Van Cleave—Kemp	71.32	60.30		19.61

Property Name and Operator	Current Year Dollars	Barrels	Unit Rate	Current Depletion
E. E. Elsea—Crenshaw	16.10	13.20		4.43
Evans—Various	61.42			16.89
Michna—Peer	33.01	31.05		9.08
Michna—Thomas	9.28	11.17		2.55
Galloway—Rockwell	14.06	15.17		3.87
J. Renner—Tucker	27.22	25.83		7.49
Grimshaw—Mid-Cont. Pet. Corp.	121.77	98.63		33.49
M. K. Graham—Pitzer & West	344.61	322.49		94.77
A. L. Owens—Simms	66.69	58.48		18.34
R. D. Owens—Prod. & Supply	277.94	233.10		76.43
R. D. Owens—Mid-Cont. Pet. Corp.	890.93	771.94		245.00
J. A. Driver—Mid-Cont. Pet. Corp.	16.61	14.84		4.57
J. A. Driver—Continental	97.00	86.37		26.68
J. W. Hughes—Seaboard	5.12	3.88		1.41
B. F. Eakin—Prairie	11.28	9.48		3.10
J. J. McGaw—Smith	41.27	32.62		11.35
J. J. McGaw—Sunray	49.79	42.82		13.70
J. J. McGaw—Pure	50.81	33.83		13.97
Ed. Ellis—J. K. Hughes	473.88	462.91		130.32
Blaydes—Amerada	36.46	30.53		10.02
Ellis Holmes—Davis	721.80	579.91		198.50

Ellis Holmes—Davis	180.45	144.97		49.62
Ellis Holmes—Eagle Picher	51.63	44.19		14.20
J. L. Anderson—Perkins	300.75	308.93		82.70
W. A. Brown—Tidal	8.73	7.39		2.40
W. F. McDaniel—Phillips	9.62	8.27		2.65
W. F. McDaniel—Blackwell	70.36	60.79		19.35
Dietrich—Various	1,062.32	981.55		292.14
W. O. Hayter—Rathke	87.69	93.76		27.50
Casinghead Gas—All Properties	316.67			87.08
Less Adjustment to Balance	100.73			
Depletion on Basis of 27½%	$5,475.19	4,638.41		1,533.38
Grand Totals	$6,719.76	5,674.94		2,690.21

*Depletion limited to amount shown above because reserve equals 100%.

1909 Oil Properties Owned—Cost and Depletion to Date.

Wichita Royalty Company, Wichita Falls, Texas, Tax Return for the Fiscal Year Ended May 31, 1931.

Property Name	Cost	Prior Barrels	Unit Rate	Reserve 5-31-30	Reserve 5-31-31
Bob Davis—Barnsdall Oil Co.	$27,500.00	3,630.09	7.14	25,918.84	25,918.84

Property Name	Cost	Barrels Prior	Rate Unit	Reserve 5-31-30	Reserve 5-31-31
Ellis Holmes—Eagle Picher	27,750.00	4,859.46	5.67	27,750.00	27,750.00
Ellis Holmes—J. D. Davis (1/32)..	23,000.00	9,618.11	2.34	23,000.00	23,000.00
Ellis Holmes—J. D. Davis (1/8)...	75,000.00	38,472.72	1.90	75,000.00	75,000.00
J. A. Novotny—Prairie O. & G. Co.	19,362.00	13,326.16	1.29	17,116.08	17,792.48
J. A. Novotny—White Eagle	14,683.50	8,509.10	1.51	12,848.74	12,848.74
J. W. See—Comar Oil Co.	20,000.00	2,867.40	6.89	19,956.54	20,000.00
Lou Catt—Carter Oil Co.	32,000.00	3,030.28	9.86	29,878.56	29,878.56
Grimshaw—Mid-Continent Pet...	937.50	1,334.43	.68	937.50	937.50
Grimshaw——Gulf Production Co.	2,812.50	1,064.08	2.17	2,309.05	2,309.05
Grimshaw—Cheney & Miller	3,750.00	1,413.83	2.60	3,682.51	3,682.51
C. W. Goltry—Amerada Pet Corp.	11,500.00	10,514.30	1.06	11,295.50	11,500.00
W. F. McDaniel—Phillips Pet. Co.	250.00	327.82	27½%	250.00	250.00
W. F. McDaniel—Phillips Pet Co.	250.00	327.82	27½%	250.00	250.00
W. F. McDaniel—Blackwell O. & G.	1,375.00	1,259.59	27½%	1,375.00	1,375.00
Carmichael—Comar Oil Co.....	2,000.00	1,804.44	1.06	1,924.24	1,984.20
Fred Beverlin—Comar Oil Co.....	5,500.00	5,103.71	.96	4,961.79	5,039.74
W. A. Brown—Humble O. & R. Co.	2,500.00	1,012.99	27½%	2,500.00	2,500.00
W. A. Brown—Tidal Oil Co.	2,500.00	355.02	27½%	2,500.00	2,500.00
Curtis Lane—Hobbs et al.	663.75	20.89		663.75	663.75
W. O. Hayter—Rathke Oil Co.....	8,900.00	1,120.97	7.30	8,900.00	8,900.00
L. M. Hayter—Humble O. & R. Co.	100.00	24.41	4.43	100.00	100.00

J. B. Routon—Root Drilling Co....	2,500.00	212.70	9.65	2,117.89	2,139.51
J. L. Anderson — Fain - McGaha Corp.	100.00	33.03	2.44	100.00	100.00
J. L. Anderson—Prairie O. & G. Co.	100.00	49.71	1.30	64.24	72.52
J. L. Anderson—Empire O. & R. Co.	1,600.00	650.07	2.56	1,596.67	1,600.00
J. L. Anderson—Humble O. & R. Co.	2,400.00	820.15	2.38	1,983.80	2,045.13
J. L. Anderson—Perkins & Cullum	6,800.00	2,600.88	2.52	6,800.00	6,800.00
Deitrich—Sun Oil Co.	1,000.00	939.97	.82	1,000.00	1,000.00
Dietrich—Magnolia Pet. Corp.....	500.00	600.52	.73	500.00	500.00
	$297,084.25	115,676.83		287,030.70	288,187.53

West Texas—Meridian Pet.	$2,600.00
Mann Hood—Lowry Oil Corp.....	250.00
D. M. Bishop—Waggoner et al.....	900.00
Clay Wilson—H. A. O'Neil	2,000.00
S. M. Jameson—W. M. Priddy....	500.00
A. J. Van Cleve—Oscar Kemp	3,875.00
E. E. Elsea—Albert Crenshaw....	8,000.00
Evans—Various	7,640.00
Michna—Peer et al.	11,750.00
Galloway—J. A. Rockwell	5,250.00
J. Renner—Tucker Oil Co.....	6,000.00

Property Name	Cost	Barrels Prior	Rate Unit	Reserve 5-31-30	Reserve 5-31-31
Graham—Pitzer & West	47,500.00				
A. L. Owens—Simms Oil Co.	25,100.00				
R. D. Owens—Mid Cont. et al.	69,300.00				
J. A. Driver—Continental et al.	17,500.00				
J. W. Hughes—Seaboard O. & G.	600.00				
B. F. Eakin—Prairie O. & G.	4,200.00				
J. J. McGaw—E. L. Smith & Co.	3,000.00				
J. J. McGaw—Sunray Oil Co.	3,000.00				
J. J. McGaw—Pure Oil Co.	3,000.00				
Ed. Ellis—J. K. Hughes	12,000.00				
Blaydes—Amerada Pet. Corp.	4,000.00				
C. F. Kunkel—Prairie et al.	–o–				
Developed—Non-Producing					
Victor	1,050.00				
Michna—Berin & Rubin	1,250.00				
College Heights	250.00				
J. A. Driver—Sun Co.	10,000.00				
McClure	800.00				
J. E. Musick	650.00				

McIntosh	10,000.00				
Riversand	112.50				
Julia Brunner	7,000.00				
	$269,077.50	143,117.99		$219,176.88	$220,710.23
Undeveloped Properties					
Callahan County, Texas	2,500.00				
Gray and Wheeler Counties, Texas	10,000.00				
Ellis County, Texas	160.00				
Hartley County, Texas	1,920.00				
Pecos County, Texas	640.00				
	15,220.00				
Total Cash Cost	581,381.75				
Appreciation Set Up	189,291.64				
Grand Totals	770,673.39	258,794.82		506,207.58	508,897.79

1639

1914 Opening Balance Sheet.

Wichita Royalty Company, Wichita Falls, Texas.

At the Close of Business May 31, 1930.

Assets.

Cash in Banks—		
City National Bank	$2,917.77	
Security National Bank	80.67	$2,998.44
Accounts Receivable—		
For Sale of Oil	32.32	
For Money Advanced	19,428.67	19,460.99
Notes Receivable—		
For Property Sold	2,750.00	
For Money Advanced	2,000.00	4,750.00
Land—Owned in Fee	4,012.50	
Stock—In Land Development Company	48,862.20	52,874.70
Oil & Gas Properties—Per Books & Engineer's Valuation Reports (Analysis)		770,673.39
Permanent—Office Furniture, less depreciation		679.42
		$851,336.94

1915 Liabilities.

Notes Payable—		
For Money Borrowed	26,389.08	
For Land in Fee	1,841.68	28,230.76
Reserve—For Depletion of Oil & Gas Properties (Analysis)		506,207.58

Nominal—		
Capital Stock Authorized....	1,000,000.00	
Capital Stock Unissued.....	185,085.00	814,915.00
Surplus—May 31, 1931—Per Books and Annexed Analysis .....(—)		498,016.40
		$851,336.94

1916 Closing Balance Sheet.

Wichita Royalty Company, Wichita Falls, Texas.

At the Close of Business May 31, 1931.

Assets.

Cash in Banks—City National		53.50
Accounts Receivable—		
For Sale of Oil	429.41	
For Money Advanced	19,428.67	19,858.08
Notes Receivable—For Money Advanced....		2,000.00
Lands—Owned in Fee	4,012.50	
Stocks—(Litigation) In Land Development Company	48,862.20	52,874.70
Oil & Gas Properties—Per Books & Engineer's Valuation Reports (Analysis)..		770,673.39
Permanent—Office Furniture, Less Depreciation		521.48
		$845,981.15

1917 Liabilities.

Accounts Payable—Current		12.89
Notes Payable—		
For money borrowed (litigation)	22,000.00	
For land in fee	1,841.68	23,841.68
Reserve—For Depletion of Oil & Gas Properties (Analysis)		508,897.79
Nominal—		
Capital Stock Authorized	1,000,000.00	
Capital Stock Unissued	185,085.00	814,915.00
Surplus—May 31, 1931—Per Books and Annexed Analysis	(—)	501,686.21
		$845,981.15

1918 Analysis of Surplus.

Wichita Royalty Company, Wichita Falls, Texas.

Tax Return for the Fiscal Year Ended May 31, 1931.

Balance—May 31, 1930—Per Books and prior Return	(—)	498,016.40	
Add—Adjustment in accordance with J. E. #4, Sept. 30, 1930		117.92	(—) $497,898.48
Deduct—Net Loss for the Fiscal Year Ended May 31, 1931			3,787.73
Balance—May 31, 1931—Per Company Books			(—) 501,686.21

Affidavit—(This affidavit same as appears on Plaintiff's Exhibit 219, except for the date which on this affidavit is August 15, 1931. Signed E. E. Scannell, Trustee, before C. L. Lorenz, Notary Public.)

1919 The Witness:

That report was sworn to by me. I don't remember when the cross petition was filed, you will have to refer to the petition to see the date.

O. C. DICKSON, a witness for the Plaintiff, being first duly sworn, examined in chief by Mr. Humphrey, testified as follows:

My name is O. C. Dickson. I have been subpoenaed here as a witness.

On June 25, 1925, I was employed by Murchison and Fain, I find that on that date George Peckham paid the Murchison and Fain Oil Company $9,493.75, by a check drawn on the Security National Bank. That is in the handwriting of Charles P. McGala, he is one of the members of the firm of Murchison and Fain. The consideration for that check was one/128 interest in 217 acres of land known as the J. L. Anderson land—that is 1/16th of the 1/8th royalty—I made a mistake, that is 245 acres instead of 217 acres. I have a copy of the mineral deed, it is 1/128th of the minerals under that land as a royalty interest.

Cross Examination.

By Mr. Rogers:

He paid that amount by check introduced in evidence, marked "Plaintiff's Exhibit 178." His check was deposit-

ited to our account in the City National Bank on

1920 June 25, 1925. The date of the conveyance to him is June 30, 1925.

Mr. Rogers:

I offer the instrument in evidence, Defendant's Exhibit 185.

DEFENDANT'S EXHIBIT 185.

Mineral Deed.

C. W. Murchison, E. R. Fain and Chas. P. McGaha trustees of Murchison and Fain Oil Company, Wichita Falls, Texas, to G. W. Peckham, Grantee.

Consideration $10.00 and other valuable consideration.

Conveying unto said grantee an undivided 1/128th interest in and to all of the oil, gas, and other mineral in and under, and that may be produced from the following described land situated in Archer County, Texas.

The South sixty acres of the West eighty acres of Block No. 22, Anderson South Pasture Sub-Division.

The North twenty-five acres of the east Fifty acres of the West one hundred acres, block 19, Anderson South Pasture.

The East sixty acres of the West one hundred and sixty acres of Block No. 19 Anderson south pasture subdivision.

Dated June 20, 1925.

Duly acknowledged on June 20, 1925.

The Witness:

Our check No. 1,514.00 for $2,125.00, payable to the order of G. W. Peckham, paid July 29, 1925, was issued for a mineral deed from Mr. Peckham to Murchison and Fain Oil Company dated July 1, 1925, covering
1921 an undivided 1/32nd interest in and to the oil, gas and other minerals in and under the south

thirty-two acres of block 21, South Anderson land. I will read the description; as shown by map or plat of record in the office of the county clerk of said county. The south sixty of the west eighty of block 22, Anderson South Pasture Subdivision the north twenty-five acres of the east fifty acres of the west one hundred acres, block 19, Anderson South Pasture; the east sixty acres of the west one hundred and sixty acres of block 19, Anderson South Pasture subdivision, all in Archer County, Texas. It is 1/32nd of all the oil royalty and gas and rental on royalties due to be paid under the terms of said lease. The land is as follows, to the Empire, thirty-two acres, Cullum, sixty acres; Prairie Oil and Gas, forty acres; Weldon, twenty-five acres; Constantine, twenty acres. The date of the deed is July 1, 1925. There was no other dealings between Murchison and Fain Oil Company and Mr. Peckham in respect to these Anderson lands, to my knowledge.

Re-Direct Examination.

By Mr. Humphrey:

I knew George Peckham during his lifetime, he was a very good friend of mine. He was actively engaged in buying and selling oil properties and royalties and leases during his lifetime and handled substantial sums of money, and dealt with substantial people. I know his general reputation for honesty and never heard
1922 it questioned during his lifetime.

Mr. Boone:

I have Mr. Harrell's income tax return for the years 1925 and 1926, which I tender to counsel for Wichita Royalty Company.

E. E. SCANNELL, recalled for further direct examination by Mr. Rogers, testified as follows:

I have handed you the memorandum book of G. W. Peckham written in his own handwriting. On page 107

it says, "Paid Royalty on 217 acres Norday Company, $16,500.00, sold for $28,675.00, profit $12,175.00; one-half twenty acre lease in Vernon, from W. H. Peak for $3,000.00 forfeited for rents, loss $3,000.00." The Anderson pool was known as the Norday pool. The discovery well was drilled there, the Norday, and that is the way it is designated. Take for instance, the Cross Plains pool, it was around there right close to Cross Plains and that is the name they gave it, as they also did the Bristow pool and the Tonkowa property.

Cross Examination.

By Mr. Humphrey:

I have the deed from George Peckham to Wichita Royalty Company covering the south Anderson land. It is the south thirty-two acres in block 21, Plaintiff's Exhibit 174. On July 1, 1925, George Peckham conveyed to Wichita Royalty Company an undivided 1/16th interest in the oil and gas in the following land; the south sixty acres of the west eighty acres of block 22, and the north twenty-five of the east fifty of the west one hundred of block 19, and the east sixty of the west one hundred and sixty of block 19.

1923

The interest conveyed by Defendant's Exhibit 185, deed from Murchison and Fain Oil Company to G. W. Peckham, dated June 20, is 1/128th interest in and to the minerals. The deed from Peckham to the Royalty Company recites that the 1/16th interest is to an oil and gas lease, which would make the conveyance equivalent to 1/128th royalty interest. The property described in the conveyance from Murchison and Fain to Peckham is the south sixty acres of the west eighty acres of block 22, and the north twenty-five acres of the east fifty acres of the west one hundred acres of block 19, and the east sixty acres of the west one hundred acres of block 19. In the Murchison and Fain deed, it has one hundred and forty-five acres, and in the deed from Peckham to the royalty

company it says one hundred and seventy-seven acres. In other words, he conveyed thirty-two acres more, but conveyed the identical property and the identical interest that he got from Murchison and Fain to the royalty company.

1924 Re-Cross Examination.

By Mr. Boone:

I have read from a book of George Peckham in his handwriting, I don't know the date, this indicates—I don't know whether it is April, 1925, or not, here is the beginning in February, 1925. I read on page 107. The date on page 106, is 4-28—on Page 108 it is May 5. If you look in between May 5 and April 28, there is an entry dated July 28, I presume they are all in 1925. I think that is the same 217 acres involved in this check of nine thousand and some odd dollars, because it is the Norday acreage, and the amount is the same, the Norday pool is the Anderson pool. I don't know whether he bought other pieces of property in the Norday pool or not. The deed shows that Mr. Peckham sold some to Murchison and Fain in the Norday pool. I couldn't say whether he made a profit on the transaction. I do not say that George Peckham made a profit off of this company on the Murchison and Fain deal, I am offering it for whatever it is worth, it is in the record. The vouchers show on these two pieces of property that he acquired from Murchison and Fain, Voucher No. 385 on the Anderson that we got from George Peckham recites that we got 1/16th royalty on all of block 21, east twenty-five acres and the north fifty acres, the west one hundred acres, block 19, the east sixty acres of the west one hundred and sixty acres of block 19; south sixty acres of the west eighty acres, block 22, J. L. Anderson south pasture subdivision, Archer County, Texas; 1/8th royalty of the west half of the southwest quarter, northwest
1925 quarter, section 2, J. Pointevant Survey, Young County, Texas; 217 acres in the J. L. Anderson

subdivision known as the Norday district; twenty acres in the J. Pointevant Survey, Young County. For $6,000.00. Then check No. 387 says, 1/16th royalty on all of block 21 in the east twenty-five acres of the north fifty acres of the west one hundred acres, block 19, east sixty acres, west one hundred and sixty acres, block 19; and the south sixty acres of the west eighty acres, block 22, J. L. Anderson pasture subdivision Archer County, Texas; 1/8th of the royalty on the west one-half of the southwest quarter of the northwest quarter of section 2, J. Pointevant Survey, Young County, Texas. Consideration $5,000.00. He paid $11,000.00 for it. Then he bought 217 acres royalty in the pool—I don't know exactly what he bought in there, he bought some of the Pointevant Survey.

Re-Cross Examination.

By Mr. Morrow:

I saw Mr. F. O. Harrell some time in the fall of 1936, both here and in Oklahoma City. I was with him in old Mexico this summer. He was here two or three times and I saw him several different times, also in Oklahoma City. I don't know whether it was before or after the amended cross action including these items filed, the records will show when the cross action was filed.

1926 M. E. WALLACE, a witness for the Defendant, being first duly sworn, examined in chief by Mr. Rogers, testified as follows:

My name is M. E. Wallace. I have lived in Wichita Falls since September of 1920. I am a Certified Public Accountant, my certificate is dated August 11, 1928, No. 300.

Some time ago I was employed by Mr. Scannell, trustee of the Wichita Royalty Company, to make some inves-

tigation with respect to this litigation. I have read the pleadings. I have read the decision in the Supreme Court in this case. When I was employed, I found that Mr. Sheppard had done considerable work in the matter. His associate had died last fall, Mr. Sheppard was not in the best of health, according to my information. I found that Mr. Sheppard had made a list of all of the checks and deposits of G. W. Peckham with the City National Bank from January 2, 1923, to the date of Mr. Peckham's death. Mr. Sheppard is here in town. These work sheets show, and carry forward daily the deposits and withdrawals with a classification of transferred funds and funds deposited from other sources. There was a good deal of preliminary work done prior to my investigation. I have been advised, from the pleadings and other sources, the item I was requested to check into and determine the bank received upon the personal indebtedness of G. W. Peckham out of his account with the bank into which moneys were deposited in Wichita Royalty Company's account and transferred into G. W. Peckham's account.

From the information I had, I have picked out
1927 the specific items and specific properties and specific periods of time and from the photostatic copy of the bank's records and from the records of the Wichita Royalty Company and from the deposition of Mr. Deaton, into which was copied canceled checks of G. W. Peckham, I have endeavored and have analyzed several accounts between the parties covering the specific periods of time. In addition to that, I have read the first twelve volumes of the testimony, and have checked my report and the various items in it against the books and records of the Wichita Royalty Company in so far as they are applicable and against the checks of G. W. Peckham and against the bank records, and against the exhibits and testimony that has been introduced in evidence. I found in reading the testimony that all of the record with reference to one particular item is not in one place, but is scattered throughout the testimony. I have endeavored to go through the record and go through the books and

records of the Wichita Royalty Company so that I might, in a condensed form, and in a related matter, set down what I find the facts to be with respect to the several properties designated upon the books and records of the Wichita Royalty Company.

Mr. Rogers:

I will ask that that instrument be marked for identification, Exhibit 186 of Defendant, and also ask that this other instrument be marked for identification, Defendant's Exhibit 187.

The Witness:

Defendant's Exhibit 186 is a typewritten re-
1928 port consisting of thirty three pages and an index, in two divisions. The first nine pages of which is a narrative, in chronological form, describing certain properties from the period of January 1, 1926, to March 9, 1926, and the latter part of the first division, being page 1659, deal with transactions on the Marlborough Addition, moneys that were deposited and are drawn on the trust funds, which found their way into the Marlborough Addition. The second section, beginning with page 1661 and going through Page 1676, is a narrative description of the various repudiated properties, beginning No. 71 Grimshaw; 75 Luke Wilson; 76 J. H. White; 78 Curtis Lane; 79 Routon; 80 Anderson; 81 Callahan County; 83 Porter Ranch; 93 Ellis County, Oklahoma; 94 Hartley County; 95 Anderson; 96 Paulk; 97 Millner oil payment, in the series of pages I have made a brief on each property trying to show the history of it in chronological form, as to acquisition, the purchase, the operation, its cost, profits, and such other information as I thought might be pertinent to that particular property. I showed what each of such properties has cost the royalty company and what the royalty company has received from the respective property. I have traced the cost of the receipts of the property, and I think in each one a little statement showing the net re-

sults of the ownership. I believe the facts found are correct.

Mr. Rogers:

We offer in evidence Defendant's Exhibit 186, with the exception of pages .... and ...., as follows:

1929 INDEX.

Summary.
Property #71, Grisham.
Property #75, Luke Wilson.
Property #76, J. H. White.
Property #78, Curtis Lane.
Property #79, Routon.
Property #80, Anderson.
Property #81, Callahan County.
Property #83, Porter Ranch.
Property #93, Ellis County, Okla.
Property #94, Hartley County.
Property #95, Anderson.
Property #96, Polk.
Property #97, Milner Oil Payment.

1930 January, February, and March, 1926.

Analysis of Inter-Related Accounts of Wichita Royalty Company, City National Bank of Wichita Falls, C. W. Peckham, J. T. Harrell and W. R. Peckham.

On January 1, 1926, G. W. Peckham and J. T. Harrell were good friends. Mr. Peckham was Trustee of Wichita Royalty Company; Mr. Harrell was an executive officer of the plaintiff bank. They were business associates. These men were partners in the large suburban venture known as Marlborough Addition (See Mr. Harrell's testimony, p ..... There were then negotiating with W. S.

Curlee for their jointly interested in New Mexico leases (See G. W. Peckham's check to J. T. Harrell dated Jan. 24, 1925.) They also owned undivided interests in a producing property known as Stephens royalty. Mr. Peckham acquired his interest in Stephens Royalty as of November 3, 1925, from J. T. Harrell and C. E. Basham (Mr. Carson's testimony, pp. .....)

On January 1, 1926, Mr. J. T. Harrell owed the plaintiff Bank $7,500.00. This indebtedness was increased on January 11, 1926, to $10,060.00. Eight days later, on January 9, 1926, Mr. Harrell's indebtedness was again increased to $15,574.44 (Mr. Harrell's testimony, p. ....; Mr. Carson's testimony, p. ....).

On the date of Mr. Harrell's second increase of his indebtedness to the Bank (January 9, 1926), Mr. Peckham owed the bank $28,050.00 (Mr. Carson's testimony p. ...., defendant's Ex. 126, p. ....). On the same date he owed Mr. Harrell and Mr. Basham $5,000.00 and interest on notes executed November 3, 1925, for his purchase of the Stephens Royalty (See Mr. Harrell's testimony, p ....). Mr. Harrell and Mr. Peckham were also jointly and severally liable to the Highland Irrigation Company on vendor's lien notes for the purchase of Marlborough property totaling $52,939.00 and interest (Mr. Harrell's testimony, p. ....).

1931

On January 1, 1926, Wichita Royalty Company owned valuable properties and was not indebted to the Bank for loans (Mr. Harrell's testimony, p. ....). G. W. Peckham's personal indebtedness to the bank was $28,050.00.

Some time before January 1, 1926, negotiations were begun for a second sale between J. T. Harrell and G. W. Peckham for the purchase and sale of the remaining interest of J. T. Harrell and C. E. Basham in Stephens Royalty (pp. .....). J. T. Harrell and C. E. Basham executed the deed on January 1, 1926, conveying such remaining interest to Wichita Royalty Company (defendant's Exhibit No. 8, p. ....).

This sale by J. T. Harrell and C. E. Basham to Wichita Royalty Company was for a consideration of $22,200.00

to be paid J. T. Harrell and C. E. Basham and G. W. Peckham's conveying to J. T. Harrell and C. E. Basham the half interest of G. W. Peckham in the Curlee land jointly owned by J. T. Harrell and G. W. Peckham. The consideration was paid by G. W. Peckham. He conveyed his interest in the Curlee tract and paid from his commingled account the following payments, which included interest on deferred payments:

Jan. 15, 1926, J. T. Harrell, $1,100.60, Page .....
Jan. 15, 1926, C. E. Basham, $1,100.60, Page .....
Jan. 25, 1926, J. T. Harrell, $5,014.00, Page .....
Jan. 25, 1926, C. E. Basham, $5,014.00, Page .....
Mar. 6, 1926, J. T. Harrell, $2,530.00, Page .....
Mar. 6, 1926, C. E. Basham, $2,530.00, Page .....
Mar. 31, 1926, J. T. Harrell, $2,543.50, Page .....
Mar. 31, 1926, C. E. Basham, $2,543.50, Page .....

Peckham's deed to the Curlee interest recited $4,814.00 cash payment (p. .....). It seems Mr. Peckham and Mr. Harrell each paid $2,567.75 for the interest (Mr. Carson's testimony, p...., Plaintiff's Exhibit 45, p. ....). Am informed that the Examiner's notes not yet transcribed show that Mr. Harrell testified that he and Mr.
1932 Basham took in the Curlee interest for $3,567.75, knowing that G. W. Peckham was making a $1,000.00 profit in the transaction whereby J. T. Harrell and C. E. Basham sold Wichita Royalty Company this Stephens royalty interest.

At the beginning of business January 4, 1926, Mr. Peckham's personal balance was $878.75 (plaintiff's Exhibit 45, p. ...). On the same day trust check No. 452 was drawn on the plaintiff bank payable to G. W. Peckham for $5,000.00; which Mr. Peckham deposited on that date to his personal account (plaintiff's Exhibit 66, p. ...., also Mr. Carson's testimony, p.....). The deed to Wichita Royalty Company is dated January 1, 1926. Mr. Peckham caused trust records to show this $5,000.00 to apply on Stephens royalty purchase. This check is dated

January 4, 1926, deposited to Peckham's personal account, from which he subsequently paid J. T. Harrell and C. E. Basham the first payment on Stephens royalty. It would thus appear that the deed from Harrell and Basham to the Stephens Royalty was in fact signed the date it was dated.

The next day after Peckham deposited $5,000.00 of trust funds in his account, and on January 5, 1926, Mr. Peckham paid from his commingled account $812.00 to Highland Irrigation Company, being his part of the joint purchase of additional Marlborough Acreage by Peckham, Harrell, Peckham and Kemp (Plaintiff's Exhibit 45, p. ...; Carson's testimony, p. ....).

From this date, January 5, 1926, to January 11, 1926, G. W. Peckham's commingled account consisted wholly of trust funds. On January 11, 1926, trust check No. 458 was drawn on and payable to the plaintiff Bank's order in the sum of $5,000.00 (plaintiff's Exhibit 67, p. ....; Mr. Carson's testimony p. ....). This $5,000.00 was deposited by Mr. Peckham in his commingled account. On the same day he paid $2,567.75 out of the commingled funds to Mr. Curlee as his part of the joint purchase with Mr. Harrell of the Curlee land. This personal interest of G. W. Peckham was later conveyed to Harrell and Basham as a part of the consideration for the conveyance to Wichita Royalty Company of Stephens royalty.

1933

The next day, January 12, 1926, at which time Mr. Peckham's commingled account consisted wholly of trust funds, he paid $454.50 to the Highland Irrigation Company as a payment on the joint purchase by Messrs. Harrell and Peckham on their Marlborough venture (p. ...).

Four days later, January 16, 1926, Wichita Royalty Company's liability record with the plaintiff bank was charged with $15,300.00, which the Wichita Royalty Company did not get credit on their bank account for the loan until January 18, 1926, two days after the date of the liability record. This $15,000.00 loan was negotiated between J. T. Harrell for the bank, and G. W. Peckham,

trustee of Wichita Royalty Company. Very frequently when application is made for a fifteen or twenty thousand dollar loan, inquiry is made as to the intended use of the proceeds (See Mr. Harrell's testimony).

On January 16, 1926, the date the loan was made, Mr. Peckham paid Messrs. Harrell and Basham from his commingled account $2,211.32 (Plaintiff's Exhibit 71, p. ....; Mr. Carson's testimony p. ...; Plaintiff's Exhibit 45, p. ....., also Mr. Carson's testimony p. .....). Of this amount $1,362.87 was trust funds previously transferred from the trust account.

Two days after the above transaction, being January 18, 1926, the above mentioned $15,000.00 trust loan was deposited to the credit of Wichita Royalty Company's account in plaintiff bank on the same day trust check No. 461, in the amount of $15,769.07 was drawn payable to the order of plaintiff bank and deposited to Mr. Peckham's commingled account (Mr. Carson's testimony p. ....; plaintiff's exhibit 45, p. ....; plaintiff's exhibit 68, p. .....

Seven days later, January 25, 1926, before another deposit had been made to Peckham's personal account and while the account still consisted of trust funds,

1934 Mr. Peckham paid to Harrell and Basham $10,028.00 (Plaintiff's Exhibit 45, p. ....; Mr. Carson's testimony p. ....). Half of the check was deposited to Mr. Harrell and the remaining to Mr. Basham. On this date the beginning balance of Mr. Harrell's deposit was $219.16 (defendant's exhibit 128, p. ....). His personal liability to the Bank was $15,574.44 (defendant's exhibit 127, p. ....).

On the same day Mr. Harrell, the executive officer of the Bank who negotiated the loan of January 16th for $15,000.00 (Mr. Harrell's testimony p. ...) to the Wichita Royalty Company out of which proceeds he received $5,014.00 as shown above, paid plaintiff Bank $5,006.67 on his private debt (defendant's exhibit 127, p. ...; defendant's exhibit 128, p. ....). The balance in Mr. Harrell's personal account at the close of business January

25, 1926, was $186.29 (defendant's Exhibit 128, p. ....). Thus it is evident that if Mr. Harrell had not received the payment of the above $5,014.00 out of the transferred proceeds of the loan to Wichita Royalty Company which he made to G. W. Peckham, trustee, he could not have paid $5,006.67 on his private debt to the Bank. Very frequently bankers inquire the intended use of the proceeds of a fifteen or twenty thousand dollar loan (See Mr. Harrell's testimony).

The effect of the above, as indicated by the records, is this: Mr. Harrell, as an individual, had acquired and sold a valuable Property. As an executive officer of plaintiff Bank he had loaned the money with which it was bought. This loan was negotiated to the credit of the Royalty Company and title was conveyed to Messrs. Harrell and Basham to the trust. Mr. Peckham, as an individual, disposed of his personal interest in the Curlee land for a $1,000.00 profit; Mr. Peckham paid Mr. Harrell from transferred funds such an amount as to enable Mr. Harrell to pay the plaintiff bank upon his own indebtedness to the bank in the sum of $5,006.67. The bank thus received on the payment of J. T. Harrell's personal debt $4,827.71 of the proceeds of the loan which J. T. Harrell, for the Bank, made to G. W. Peckham for the Royalty Company.

1935

On February 2, 1926, Trust check #466 in the amount of $400.00 was deposited in Mr. Peckham's personal account (Carson's testimony, p.....). On the same day Mr. Peckham drew his check on the commingled account for $5,100.00 payable to Messrs. Harrell and Basham, $2,550.00 (or one-half) of which was deposited into Mr. Harrell's personal account (p. ....). $3,074.15 of the cash transferred from the Trust account was included in this $5100.00 payment.

On February 13, 1926, Mr. Peckham's personal liability was credited with $550.00 (defendant's exhibit 126, p. ....), and his commingled account was charged with $550.00 (plaintiff's exhibit 45, p. ....).

On February 27, 1926, Trust check 447 in the amount of $400.00 (Carson's testimony, p. . . .), was deposited into the personal account of Mr. Peckham.

On March 1, 1926, Mr. Peckham owed the plaintiff bank $28,050.00 plus interest (defendant's exhibit 126, p. . . .). The balance in his personal account at the beginning of business on March 1, 1926, was $341.90. On the same date Mr. Harrell owed the bank $7,060.00 (defendant's exhibit 127, p. . . .). Mr. W. H. Peckham on the same day was indebted to the plaintiff bank $6,120.00 (defendant's exhibit 130, p. . . .). Mr. W. H. Peckham was jointly liable with Mr. G. W. Peckham and Mr. Harrell in excess of $50,000.00 on the Marlborough partnership venture. On the same day the Wichita Royalty Company's note was executed and its liability account was charged with $25,500.00 (plaintiff's exhibit 104, p. . . .), $25,000.00 of which amount was deposited
1936 into the Trust account (defendant's exhibit 124, p . . . .). On the same day Mr. G. W. Peckham drew his check on the commingled account in the amount of $11,811.85 payable to Mr. W. H. Peckham, in payment of his interest in the Marlborough Addition (Carson's testimony, p. . . ., also plaintiff's exhibit 77, p. . . .). On the same day G. W. Peckham's personal balance was $341.90, which was insufficient to pay the check he had issued to W. H. Peckham in the amount of $11,811.85 (plaintiff's exhibit 45, p. . . .). This check was charged to the account of G. W. Peckham on March 9, 1926, 1926. Mr. G. W. Peckham's balance in the commingled account was $225.20, which consisted wholly of transferred funds. On the same day Trust Check No. 478 in the amount of $17,623.70 was issued payable to the plaintiff Bank (defendant's exhibit 111, p. . . .). A notation on the voucher is as follows: "To apply on purchase of 1/2 undivided interest on the Marlborough Addition, etc." This check was deposited on March 6, 1926, into G. W. Peckham's personal account which then consisted entirely of transferred funds. On the same day Mr. Peckham drew against his commingled account a check for $5,060.00,

payable to the order of Messrs. Harrell and Basham, one-half of which was deposited into Mr. Harrell's account, and the other half into Mr. Basham's account (Mr. Carson's testimony, p ....).

On March 9, 1926, upon G. W. Peckham's check on his commingled account, $11,871.85 was deposited into the personal account of W. H. Peckham (defendant's exhibit 129, p. ....). On the same day W. H. Peckham paid his entire indebtedness of $6,120.00 to the plaintiff bank (defendant's exhibit 130, p. ....). The Bank thus received $5,582.93 in payment of W. H. Peckham's debt out of the proceeds of the loan Harrell, for the Bank, made Wichita Royalty Company.

Very frequently banks and bankers inquire into the purpose of the loan and what is to be done with the proceeds. With respect to the loan of $25,000.00 on March 1, 1926, the records show: that it was negotiated between Mr. Harrell and Mr. G. W. Peckham; that Mr. Peckham was a joint maker of the note with the Wichita Royalty Company (See note in evidence) of which he was Trustee, that the proceeds of the loan were deposited to the Trust account; that $17,623.70 was transferred by Trust check #478 (the same date as the loan) to Mr. Peckham's account which then consisted of a balance of $225.20. From this commingled account, G. W. Peckham paid to Messrs. Harrell and Basham, $59,060.00 and paid Mr. W. H. Peckham $11,871.85 who then paid the Bank his entire obligation of $6,120.00. From the proceeds of the transferred funds, Messrs. Harrell and Basham received $5,060.00 and the plaintiff bank received $6,120.00 (Mr. Peckham's entire indebtedness).

1937

At the beginning of business on March 9, 1926, the balance in Mr. W. H. Peckham's personal account (defendant's exhibit 129, page ....) was $518.62. Had it not been for the sale of his interest in the Marlborough (which was paid for out of transferred funds from the proceeds of the above mentioned loan) Mr. W. H. Peckham would have been unable to pay his indebtedness to the Bank.

Marlborough.

Apparently this Marlborough loan of $25,000.00 was secured by G. W. Peckham, trustee, to take over and improve G. W. Peckham's held interest in Marlborough Addition, a fourth having been acquired by him several months before, and the remaining one-fourth having been acquired from his brother at a profit to his brother at the time the loan was negotiated. This conclusion is supported by the above facts and the following:

G. W. Peckham caused his trust books to show Wichita Royalty Company's acquisition of a half interest in Marlborough Addition for a total consideration of $49,566.20 (defendant's exhibit 111, p. ....). On April 10, 1926, G. W. Peckham executed a deed to his half interest in Marlborough Addition to Wichita Royalty Company, grantee. This deed he left in the office of Wichita Royalty Company with instructions that he would "continue to hold this property in my name" (defendant's exhibit 107, p. ....). He placed no revenue stamps on the deed. The deed was never recorded. Checks listed as Marlboro items are as follows:

1938

Date	Number	Amount	Payee	Disposition
3-16-26	478	$17,623.70	City Nat'l Bank.....	Deposited G. W. Peckham's a/c City National Bank
3-10-26	479	6,000.00	Security Nat'l Bank.	Deposited G. W. Peckham's a/c Security National Bank
3-31-26	485	7,500.00	City Nat'l Bank.....	Deposited G. W. Peckham's a/c City National Bank
5-20-26	503	3.000.00	G. W. Peckham.....	Deposited G. W. Peckham's a/c City National Bank
6- 2-26	507	1,500.00	City Nat'l Bank.....	Deposited G. W. Peckham's a/c City National Bank
6-16-26	510	4,500.00	City Nat'l Bank.....	Deposited G. W. Peckham's a/c City National Bank
7-15-26	519	1,000.00	City Nat'l Bank.....	Deposited G. W. Peckham's a/c City National Bank
8- 2-26	525	4,000.00	City Nat'l Bank.....	Deposited G. W. Peckham's a/c City National Bank
8-27-26	532	4,357.58	City Nat'l Bank.....	Deposited G. W. Peckham's a/c City National Bank
12-22-26	556	700.00	G. W. Peckhan	Cashed—G. W. Peckham, City National Bank
1- 4-27	556A	538.16	G. W. Peckham.....	Deposited G. W. Peckham's a/c City National Bank
1-19-27	571	2,000.00	City Nat'l Bank.....	Deposited G. W. Peckham's a/c City National Bank
2-19-27	579	2,500.00	Cit Jat'l Bank.....	Deposited G. W. Peckham's a/c City National Bank
5-13-30	908	500.00	Texas Investment Co. of Wichita Falls, Texas	Deposited to account of Texas Investment Company in City National Bank.
Total		$55,719.44		

Of the proceeds of the above transfer of trust funds to the commingled account of G. W. Peckham which he, as trustee, caused trust books to show to have been issued to apply for the purchase or improvement of Marlborough Addition, $1,499.71 was paid to the plaintiff bank upon G. W. Peckham's personal indebtedness, as elsewhere shown in schedules forming a part of this report.

1939 Property No. 71 Grimshaw.

On February 12, 1923, Grimshaw conveyed to G. W. Peckham a one-fourth mineral interest in B. R. I. R. No. 39, J. E. Dowdle Survey Abstract 2215, Young County, Texas, of record in Vol. 99, page 545 of the Deed Records of Young County. The Deed shows $8.00 of canceled revenue stamps indicating the purchase price to Grimshaw from Peckham to have been not to exceed $8,000.00.

Thereafter by escrow contract dated March 12, 1923, (Defendant's Exhibit 123) G. W. Peckham contracted with himself as trustee to sell Wichita Royalty Company a part of the interest which he had theretofore acquired from Grimshaw, the consideration recited in the contract being $2,500.00 cash, the receipt of which was acknowledged by the contract, $2,500.00 in thirty days and $2,500.00 in sixty days with 8% interest on deferred payments from March 12, 1923, until paid.

The $2,500.00 which G. W. Peckham acknowledged in the escrow contract to have theretofore received is evidenced by trust check No. 1253, dated March 10, 1923, paid March 10, 1923, payable to the order of City National Bank in the sum of $2,500.00, being Plaintiff's Exhibit 154, which was deposited to the account of B. L. Fain.

Thereafter and on March 12, 1923, G. W. Peckham acknowledged before E. A. Deaton, a mineral conveyance to a part of the interest which he had acquired from Grimshaw, the conveyance being to Wichita Royalty Company of 3/16ths of the minerals in the Grimshaw 160 acres and filed for record May 18, 1923, and recorded in

Volume 99, page 555, of the Deed Records of Young County, Texas.

Thereafter Wichita Royalty Company's check No. 1291 for $2,516.67 was issued April 9, 1923, payable to the order of G. W. Peckham and deposited to the account of G. W. Peckham on April 10, 1923 (Plaintiff's Exhibit 1940 155, Page ....).

Thereafter G. W. Peckham caused Wichita Royalty Company's check No. 1325 to issue on May 11, 1923, for $2,533.33 payable to the order of G. W. Peckham which was paid May 11, 1923, and on that date deposited to the personal account of G. W. Peckham. G. W. Peckham caused Wichita Royalty Company's books to reflect that the purpose for issuing checks 1253, 1291, and 1325 for the purchase of Property No. 71, Grimshaw.

Thereafter and by deed dated May 12, 1923, G. W. Peckham conveyed to Perpetual Royalty Syndicate for $2,500.00, his remaining 1/16 interest in that which he acquired under Grimshaw's deed to him.

It appears from the record that the Grimshaw property was producing minerals at the time G. W. Peckham acquired 1/4th interest thereon, February 12, 1923. It further appears that for the period from March 12, 1923, to April 30, 1923, G. W. Peckham continued to receive the proceeds of minerals accruing to the interest in that on May 16, 1923, he paid Wichita Royalty Company $234.05 and on May 28, 1923, $302.98 as that part of his receipts from a one-quarter of the minerals which accrued to the interest he had theretofore sold to Wichita Royalty Company.

Thus from G. W. Peckham's acquiring the interest on February 12, 1923, until he accounted to Wichita Royalty Company for oil runs from and after March 12, 1923, he retained the oil runs accruing to the interest. It further appears that he charged and received from the Royalty Company of which he was trustee, $50.00 as interest upon deferred payments under his contract with himself as trustee.

It further appears that Wichita Royalty Company received from this property $8,591.76 as the aggregate of oil runs received from May 12, 1923, to September
1941 30, 1936. It further appears from Defendant's Exhibit 38, Page ...., that beginning in March, 1923, and continuing throughout the period, there was a gradual decline in the amount of production accruing to this mineral interest. No effort has been made to compute interest upon the $7,550.00 which the Royalty Company paid its trustee for this interest. nor upon the periodical credits by reason of oil runs received. It is observed, however, that due to production in 1923 being manifold greater than the production in 1936, that to accrue interest upon $7,550.00 from the date of its payment and add thereto the $7,550.00 would substantially exceed the $8,591.70 received as oil runs plus interest accrued upon the periodical payment of oil runs.

The $2,516.87 transfer of funds from the trust account to the trustee's personal account was accomplished April 10, 1923, was at a time when G. W. Peckham's then balance was $766.25.

Thereafter and on May 11, 1923, at a time when $302.10 of the $2,516.67 deposit remained in the commingled account, a second check for $2,533.33 was deposited to G. W. Peckham's personal account and charged against the trust's deposit, making the account contain $2,836.43.

Thereafter, and on June 22, 1923, when the commingled account consisted of $428.85 of the $2,533.33 deposited and $2,683.34 of his personal funds, G. W. Peckham paid the plaintiff bank $3,050.60 upon his personal indebt-
1942 edness to the bank. $390.86 of the payment so made to the bank upon the personal indebtedness of G. W. Peckham was money belonging to the Wichita Royalty Company transferred to and commingled with G. W. Peckham's private funds.

1943 Property No. 75, Luke Wilson.

Trust Check No. 154, dated February 2, 1924, for $12,000.00 was deposited on February 2, 1924, in Peck-

ham's commingled account, and the bank proved that fact. (Plaintiff's Exhibit 159, pages ..... and .....) Trust check No. 185 dated March 17, 1924, payable to the order of G. W. Peckham for $9,250.00 was deposited in G. W. Peckham's commingled account on March 18, 1924, and the bank proved this fact. (Pages .... and .... and .... and Plaintiff's Exhibit 160.) G. W. Peckham, Trustee, in directing the issuance of trust check 154 caused the voucher notes to be made and trust records to show that proceeds of the $12,000.00 was to apply to the purchase of royalties in the State of Oklahoma. On March 17, 1924, when trust check 185 was issued the trustee changed the trust records to show that both checks 154 and 185 were to apply on the Wilson Royalty. (These vouchers to be offered in evidence and photostated.)

Between G. W. Peckham's receiving the $12,000.00 on February 2, 1924, and receiving the $9,250.00 on March 17, L. F. Wilson had conveyed to G. W. Peckham one-eighth royalty interest in Lots 13 and 14, Block 27, American Tribune New Colony Company Subdivision, Archer County, Texas (Defendant's Exhibit 39). For this interest G. W. Peckham paid to L. F. Wilson out of his commingled account $20,000.00 on March 7, 1924, and $80,000.00 on March 18, 1924. L. F. Wilson's account with plaintiff Bank was credited with proceeds of G. W. Peckham's $20,000.00 check on March 6, 1924. G. W. Peckham's balance with the bank at that time was $2,242.79, and was reduced to $1,917.74 before the $20,000.00 check cleared March 7, 1924, there having been deposited on March 7, 1924, the proceeds of two loans,
1944 one to G. W. Peckham, the other to W. H. Peckham, but both deposited to G. W. Peckham's personal account. (P. ....).

Thereafter on April 22, 1924, G. W. Peckham conveyed to Wichita Royalty Company one-eighth of the interest he acquired from Wilson, the consideration being $21,250.00 above and $6,250.00 payable in oil.

On various dates G. W. Peckham made sales, in each of which purchasers assumed the proportionate part of

the $50,000.00 payable in oil and the following cash payments:

		Cash Paid	Oil Obligation
1/2 or 64/128ths	Dr. Massie	$75,000.00	$25,000.00
3/32 or 12/128ths	United Royalty Co.	27,000.00	4,687.50
1/32 or 4/128ths	King Royalty Co.	8,500.00	1,562.50
2/32 or 8/128ths	R. A. King.....	20,000.00	3,125.00
6/32 or 24/128ths	Towola Royalty Co.	37,500.00	9,375.00
4/32 or 16/128ths	Wichita Royalty Co.	21,250.00	6,250.00
	Total	$189,250.00	$50,000.00

(See Carson's testimony, pp. .....)

This $168,000.00 cash received by Peckham from outside parties, plus the $21,250.00 received by him from Wichita Royalty Company, makes his cash receipts in the transaction $189,250.00 and accounts for his having conveyed all of the mineral interest which he bought for $100,000.00 cash. The plaintiff bank received $5,091.00 of the funds transferred from the Royalty Company's account to the commingled account.

Defendant's Exhibit 40, at Page ... of the record shows the oil income received by Wichita Royalty Company to be $19,226.04.

This property was sold on November 5, 1927, to Petroleum Royalty Company as evidenced by escrow contract (Defendant's Exhibit No. 16, Page ....). Total consideration was $6,000.00 (Page ....) and was paid as follows:

1945

12/ 5/27	Cash	$2,400.00
1/ 9/28	.....	1,208.00
1/25/28	.....	1,216.00
2/29/28	.....	1,224.00
		$6,048.00 (Which is $6,000.00 plus interest.)

Deposits in G. W. Peckham's personal account were made as follows:

12/ 5/27	.....	2,400.00
1/ 9/28	.....	1,200.00
1/25/28	.....	1,224.00
2/29/28	.....	1,224.00
		$6,048.00

The defendant's books do not reflect that any cash was received by them out of the sale of this property. P. .....

The net result from the ownership of this property was a loss of $2,023.96 as follows:

Cost	$21,250.00	Cash paid
Oil Income	19,226.04	Cash paid
Loss	$2,023.96	

On February 1, 1924, the balance in G. W. Peckham's commingled account was $975.92. On February 2, 1924, trust check #154 in the amount of $12,000.00 was deposited into G. W. Peckham's account. (Page .....). Subsequent payments reduced this balance to $2,593.62 on February 4, 1924, which consisted entirely of trust funds. On February 5, 1924, the City National Bank was paid $67.67 out of trust funds as interest on G. W. Peckham's personal note.

On March 18, 1924, trust check #185 in the amount of $5,250.00 was deposited into G. W. Peckham's commingled account; on the same day G. W. Peckham paid
1946 $10,026.75 on his personal indebtedness to the City National Bank. The balance in the account after making this payment was $3,749.09. It was therefore necessary to have used $5,500.91 trust funds with which to pay his personal indebtedness.

1947 Property No. 76, J. H. White.

This property was a lease, not a royalty or mineral interest. The records do not show a recorded assignment to Wichita Royalty Company. Plaintiff's Exhibit 165, shown at Page .... of the record, shows a sale of the entire 7/8ths leasehold interest to J. H. White for $15,000.00 on December 15, 1924. This assignment was executed by C. W. Murchison, E. R. Fain, B. L. Fain, Ross Robertson, J. I. Staley and A. W. Ross. Neither G. W. Peckham not Wichita Royalty Company is shown to have joined in or ratified the sale of this entire property.

The books and records of G. W. Peckham, Trustee, describe an interest in this property to be owned by Wichita Royalty Company. Plaintiff's Exhibit 161-162, being trust checks 246 and 237, the first dated July 24, 1924, and the second dated July 2, 1924, the first being for $10,000.00 and the second being for $11,000.00, were payable to the Security National Bank, cleared through the Wichita Falls Clearing House and paid by Plaintiff Bank. On the same dates these checks for $10,000.00 and $11,000.00 were charged against Wichita Royalty Company's account for like amounts (Page .... and the bank record of the two accountants), evidently the same money.

Wichita Royalty Company sustained a net loss of $15,739.72, as thus shown:

Receipts:

Oil Runs:	
10/22/24	$2,501.51
10/ 3/24	424.39
Sale of the Property by Peckham:	
1/27/25 (p. ....)	1,796.86
4/17/25 (p. ....)	538.04
	$5,260.80

Disbursements:

Ck. #237, July 2, 1924	$11,000.00
Ck. #246, July 24, 1924	10,000.00
Net Loss	$15,730.72

Note: Mr. Carson testified that the receipts came from B. L. Fain. It is noted that the sale deed by Fain and others (Page ....) to J. H. White acknowledges the receipt of $15,000.00 on December 15, 1924, the deed being filed for record December 18, 1924. Wichita Royalty Company was paid four months later.

1949 Property No. 78, Curtis Lane.

On December 12, 1924, G. W. Peckham's check to F. O. Harrell for $312.50 was paid.

On December 23, 1924, Trust Check #317 for $695.00 was deposited to Peckham's account. Between those dates and on December 16, 1924, F. O. Harrell conveyed to G. W. Peckham, trustee, the mineral interest which Peckham described in voucher notation #317. The books of F. O. Harrell show a $698.65 receipt from G. W. Peckham, $3.65 of which is shown to be gas income. Such books do not show the purpose of the $695.00 as paid by Peckham to F. O. Harrell on November 14, 1924.

The ownership of this property resulted in a net loss as follows:

Cost		$695.00
Income	$38.25	
Refund of Commission	31.25	69.50
Net Loss		$626.50

1950 Property No. 79, Routon.

The record at page ...., Plaintiff's Exhibit 171, shows voucher check No. 373, dated May 5, 1925, payable to G. W. Peckham's order, for $2,500.00, to have been issued "to purchase 1/16 of the royalty in the Routon land, 117 acres, Archer County, Texas, $2,500.00." This check was deposited to G. W. Peckham's account and of the proceeds of such transfer the bank received $1,386.92.

The bank, through the testimony of Mr. Carson (page ....) seeks to account for G. W. Peckham expending $2,500.00 on the same day he received the trust deposit. His check (Plaintiff's Exhibit 173, page ....) shows upon its margin to have been issued for "1/12" int. in deal with Allen, Mooers Routon land," being payable to the order of Ray & Massie and indorsed for deposit to their credit. It is thought the bank is mistaken in seeking to show that this check was issued for the interest which G. W. Peckham is supposed to have acquired for his trust in that his check was for a leasehold interest and not a royalty interest. Investigation has disclosed these facts:

J. B. Routon executed an oil and gas lease on 100 acres of the Holman survey, the lease being dated March 22, 1924, and recorded in Volume 75, page 489, of the Deed Records of Archer County, Texas, the lessee being J. H. James, who assigned to R. S. Allen and J. C. Strauss an undivided interest therein by correction assignment dated October 20, 1925, of record in Vol. 106, page 640, of the Deed Records of Archer County, Texas; that Allen, Mooers and Strauss assigned an eighth carried interest in said oil and gas lease to Ray & Massie by

1951 assignment dated May 2, 1925, of 21 record in Vol. 99 page 579, of the Deed Records of Archer County, Texas (these instruments are to be offered in evidence).

Ray & Massie paid Allen, Mooers and Strauss $30,000.00 for this lease assignment. The title was carried

in the name of Ray & Massie, who rendered an account to the parties at interest showing the cost of the drilling of the dry hole. (to be offered in evidence.)

Plaintiff's Exhibit 173, being G. W. Peckham's $2,500.00 check to Ray & Massie, was deposited to the account of Ray & Massie on May 25, 1925, and shows to be for a 1/12th interest in the Routon lease. On June 27, 1925, George Peckham paid Ray & Massie $492.90 for his 1/12th of the expense incident to drilling the dry hole (copy to be offered in evidence). He paid his final balance for his part of the expense of drilling the well on September 24, 1925 (a copy of which deposit to be offered in evidence).

Thus it would appear that plaintiff's Exhibit 173 was for G. W. Peckham's personal interest in the drilling of an oil well and his interest in the leasehold estate upon which it was drilled.

Aside from the leasehold interest, Ray & Massie acquired from J. B. Routon and wife a one-fourth mineral interest in 117 acres of the Holman survey by deed dated May 1, 1925, recorded in Vol. 99, page 624, of the Deed Records of Archer County, Texas, conveying 1/16 to Wichita Royalty Company. The trust received $419.23 7-1-25 to 11-30-30, as proceeds of oil runs.

1952 Property No. 81, Callahan County.

On October 8, 1925, Peckham deposited to his personal account trust check 427 for $5,500.00. He caused notation to show that $2,500.00 of the $5,500.00 was for a royalty interest in Callahan County.

A mineral deed with the grantee's name in blank dated on the 14th day of October, 1925, was attached to a draft drawn on G. W. Peckham for $2,250.00 which

G. W. Peckham paid by check dated October 17, 1925, and charged against his personal account. On October 19, 1925, the trustee filled in the blank provided for the grantee's name inserting therein the name of Wichita Royalty Company and filing the instrument for record. (See photostatic copy, P. ....).

It now appears from testimony of Mr. Carson, ..., in connection with trust check No. 438, that Wichita Royalty Company was charged with $2,500.00 for this property paid to G. W. Peckham. There was no income fro n the property resulting in a net loss to the Wichita Royalty Company.

The bank's witness, C. A. Rogers, testified that this property was condemned. He did not testify whether it was condemned before draft paid or not.

1953 Property No. 83, Porter Ranch.

On December 1, 1925, W. L. and S. J. Porter conveyed 1007 acres to W. T. Knight, G. W. Peckham, J. T. Harrell and others for a total consideration of $32,100.00 in cash and notes. (Plaintiff's Exhibit 60. Pages .....) The deed recites that G. W. Peckham owned an undivided one-eighth interest at a cost of $4,012.50 cash and notes.

There was never a conveyance from any of the grantees in the deed or from G. W. Peckham to Wichita Royalty Company of an interest in this land.

G. W. Peckham, trustee, after paying $1,250.00 of his own funds as his part of the cash consideration for the deed caused the following trust checks to be issued showing their purpose to be the Porter Ranch Land.

#451 12/28/25 payable First National Bank for $1,250.00
#554 12/ 2/26 payable First National Bank for 1,141.82
#778 11/26/27 payable to G. W. Peckham for... 21.63
#670 12/20/27 payable to G. W. Peckham for... 147.33

$2,560.78

The amount of these checks was transferred from the trust fund to Peckham's personal account.

Thereafter the substitute trustee paid to W. T Knight $187.24, trust checks 857 and 970 applied upon the debts of the Porter land partnership.

Wichita Royalty Company received on July 26, 1926 $111.67 and on July 29, 1929, $115.81.

This property was foreclosed and sold at sheriff's sale. The excess expenditures over receipts is $2,520.54.

1954 Property No. 93, Ellis Co., Okla.

On October 8, 1926, G. W. Peckham assigned to the Wichita Royalty Company an oil and gas assignment to 80 acres in Ellis County, Oklahoma, as evidenced by Plaintiff's Exhibit 99, Page ..... The royalty to this property was also conveyed. Page .....

The cost to the Wichita Royalty for this property was $160.00 as evidenced by the following:

Reference is made to voucher record of Wichita Royalty Company, Page ....., check 554 for $1,500.00, December 2, 1926, of which $160.00 was for this property.

This property resulted in a net loss of $160.00 to the Wichita Royalty Company.

1955 Property No. 94, Hartley County.

J. M. Perkins conveyed to G. W. Peckham a mineral interest in Section 54, Hartley County, by deed dated August 7, 1926. Later Perkins drew a draft upon G. W. Peckham for $1,920.00 with deed attached. This mineral estate terminated under the terms of the deed (Plaintiff's Exhibit 42) in five years from August 7, 1926.

On December 15, 1926, G. W. Peckham, trustee, took up the draft drawn on him with trust check No. 557, for $1,920.00. The same day he acknowledged a deed to Wichita Royalty for the interest, dating his deed to his trust the same date of Perkins' deed to him and recording both instruments.

This property produced no income and terminated under its own terms, five years from August 7, 1926.

1956 Property No. 95, Anderson.

This property was purported to be an undivided 3/16 interest in an oil and gas lease on 80 acres of Lot #10, North Anderson Ranch Lands, Archer County, Texas.

Testimony introduced by the defendant shows that the Wichita Royalty Company did not receive title to this lease (Pages .... and ....). Plaintiff also testified that title did not pass to G. W. Peckham nor from Peckham to the Wichita Royalty Company, not from F. O. Harrell to the Wichita Royalty Company (Pages ..... and ....). No title is shown to this except in a third party.

The total charge to the Wichita Royalty Company was $5,000.00 as evidenced by the following:

$5,000.00 out of check #550 (in the total amount of $7,500.00) dated November 20, 1926 to the order of

City National Bank (Page .....). This check was deposited into the personal account of G. W. Peckham in the City National Bank on November 20, 1926 (Page .... and Plaintiff's Exhibit 93, page ....). It appears that Wichita Royalty Company received nothing for this $5,000.00.

This transaction resulted in a net loss of $5,000.00. Defendant testified that the Wichita Royalty Company never received anything from the money spent (Page ....). I find nothing to the contrary.

1957 Property No. 96, Polk.

On October 9, 1926, E. Polk and wife conveyed to F. O. Harrell et al, an undivided one-half mineral interest in and to sixty acres of the E. Polk land, Abstract 171, Archer County, Texas, as evidenced by Page ..... This was not subsequently conveyed either to G. W. Peckham or Wichita Royalty Company, Page .....

The total cost to the Wichita Royalty Company was $3,000.00 as evidenced by the following:

$2,500.00 out of Check #550 (in the total amount of $7,500.00) dated November 20, 1926 to the order of City National Bank, Page ..... This check was deposited into the personal account Page ...., Plaintiff's Exhibit 93, Page .....

$198.18 out of Check #554 (in the total amount of $1,500.00) dated December 2, 1926, to the order of City National Bank, page ..... This check was deposited into the personal account of G. W. Peckham in the City National Bank on December 2, 1926 Page ...., and Plaintiff's Exhibit 94, Page ....

Check #583, dated March 1, 1927, to the order of City National Bank in the amount of $301.82, Page .....

This check was deposited into the personal account of G. W. Peckham in the City National Bank on March 16, 1927, Page ...., and Plaintiff's Exhibit 95, Page .....

These transactions resulted in a net loss of $3,000.00. No testimony was introduced showing any income from this property.

Upon check #550, $7,500.00 was transferred to the commingled account, from which account G. W. Peckham gave the bank two checks, one for $8,008.00 and
1958 the other for $4,904.90, to take up drafts drawn on G. W. Peckham with leases to him attached, being from Shamrock, Texas, First National Bank, this paying on his personal debt out of the $7,500.00 transferred $6,162.25 upon checks payable to the plaintiff Bank.

The Bank received $220.58 of the $301.82 transferred upon check #583 in payment of Peckham's personal debt.

1959 Property No. 97, Milner Oil Payment.

On April 15, 1927, B. L. Fain assigned to the Wichita Royalty Company his interest in an oil payment of face value of $4,200.00 as evidenced by Defendant's Exhibit 44, Page .....

The cost to the Wichita Royalty Company was $3,000.00 as evidenced by the following:

Plaintiff's Exhibit 184, check 602, dated April 22, 1927, to the order of B. L. Fain in the amount of $1,000.00, Page ..... This check was deposited into the personal account of G. W. Peckham in the City National Bank on April 23, 1927, page ....

Plaintiff's Exhibit 185, check #607, dated May 6, 1927, to the order of B. L. Fain in the amount of $500.00, Page ..... This check was deposited into the personal account of G. W. Peckham in the City National Bank on May 6, 1927, Page ..

Plaintiff's Exhibit 186, check #610, dated May 16, 1927, to the order of B. L. Fain in the amount of $1,000.00, Page ..... This check was deposited into the personal account of G. W. Peckham in the City National Bank on May 16, 1927, Page .....

Plaintiff's Exhibit 187, check #598, dated April 11, 1927, to the order of B. L. Fain in the amount of $500.00, Page ..... This check was cleared through the Security National Bank and bears the genuine indorsement of B. L. Fain, Page .....

The bank received $10.00 of the May 6, 1927 transfer of $500.00. This paid G. W. Peckham's indebtedness to the bank for safety box rent.

1960 The ownership of this property resulted in a net loss of $2,602.15 as follows:

Cost	$3,000.00
Income	397.85
Net Loss	$2,602.15

Defendant's Exhibit 67 shows the income from this property, Page ....

None of above checks except #598, bears the genuine indorsement of B. L. Fain. Apparently, G. W. Peckham indorsed payee's name and deposited them to his own personal account.

1961 The Witness:

I do not recall having seen in the first twelve volumes of the testimony, the sale of G. W. Peckham of his interest in the Stephens Royalty which he acquired in November. Defendant's Exhibit 186, relates to and explains many of the items that are set out in accounting form in Defendant's Exhibit 187. I made this report in two volumes, because it would be easier to handle, putting single sheets in one volume and double folded sheets in the other volume, the second volume being strictly tabulated typewritten matter dealing with the bank transactions, they are inter-related, and are inseparable, except physically.

Defendant's Exhibit 187 is a typewritten report consisting of forty-three pages of typewritten matter and the index. This report has four main divisions, and a recapitulation sheet, being page ..... Now, the first section of this report, from pages ....to...., inclusive, is an analysis of the trust funds deposited by G. W. Peckham in his commingled account in the City National Bank. On this schedule I have tried to show the date paid. By that I am trying to use the cancellation date, the trust voucher number, the payee, explanation, and showing what information I had or that was advisable, showing the check number. In some instances I have copied the Wichita Royalty Company's checks and vouchers in detail, and in some instances referred to them. I had the vouchers before me in making this report. I extended this into two columns, one debit and one credit. The debit column has the amount that we were charging the bank with, on repudiated properties and any other disputed items. The credit column

1962 is the amount on which I give credit. The last column to the right is known as page No. .... on that page number you will find Mr. Carson's testimony, who identifies these items, and also states their disposition. In most instances these items were deposited in the commingled account of Mr. Peckham—I think every one of them. Then on pages .... and ...,

there is a similiar schedule, with the exception that these items were not deposited in the City National Bank, but in most instances were cashed by Mr. Peckham and in two or three instances I think were deposited in the Security National Bank. Checks Nos. 237 and 246, totaling $21,000.00, those items were not deposited as such in the Plaintiff bank. They were made payable to the Security National Bank, and we were unable to find where those specific checks were deposited directly into the City National Bank. The grand total of the first ten pages net in the debit balance is $110,225.88, which amount has been carried forward on Mr. Peckham's account and added thereto are the various checks included in the report, making a grand total of $139,341.24. I have not attempted to compute any interest. In fact, there is a foot note on page ...., which reads as follows: "The above account is subject to certain changes of debits and credits as the Court may determine, including the computation of interest." On page ...., is a recapitulation of payments to the City National Bank of trust funds on G. W. Peckham's personal debts out of the commingled account. These items total $10,713.84, and is in the amount, as I

1963

determined, of the various penetrations at various times, being fifteen in number, by penetrations, I mean the extent to which it was necessary to go into trust funds in order to pay the bank out of the account against which it was drawn. The first column is the date, by that I mean the date on which a definite payment was made to the City National Bank on Mr. Peckham's personal indebtedness out of the commingled account. The second column, as to the amount, is the extent to which it was necessary to draw upon trust funds to make this payment. The third column which I headed "source," is the trust check number which had been deposited and out of which this amount or amounts were paid. These trust checks were all offered in evidence or have been offered in evidence, and all examined by you.

Following page ...., is a series of analysis running from pages .... to ...., inclusive, six separate schedules on these pages. I will give a general description and say that I started with the date of the trust checks deposits, and carried the account on through to a point at which this penetration of payments was made, to the bank. It was made subsequent, of course, to this trust check deposit, would be any deposits of items that entered into the personal account of Mr. Peckham. By that I mean his personal account, showing the deposit of checks right on through to the end of each schedule. I have used in this computation Mr. Peckham's personal funds for his personal debts as long as it would last, and then when his personal funds
1964 gave out, I charged it against the trust funds. When I would have a deposit there of his own funds, we did not include that in his personal funds, we would increase the amount of personal funds on a given day, he had in his account. He would not increase the amount of trust funds which I say he had to his account on any day by any deposit that did not come from the Royalty Company.

On page ..., is a penetration involved only one day, I have the beginning of the balance on January 19, 1927. The balance in Mr. Peckham's commingled account at the beginning of business January 19, 1927, was $1,581.44, all of which I showed to be personal funds. On the same day trust check No. 571, payable to the City National Bank in the amount of $2,000.00 was deposited, making a total balance of $3,581.41. I schedule the $1,581.41 of the commingled account as personal funds and the $2,000.00 as trust funds. On the same day G. W. Peckham paid on his personal note, No. 87,506, $2,500.00 principal and $6.12 interest, a total of $2,506.12. Also on the same day he paid Mrs. H. H. Brown $25.00. The total payment as represented by these two checks were $2,531.12. Whereas, he had only $1,581.41 of his personal funds with which he paid these checks, making it necessary to use $949.71 of the above mentioned

trust check No. 571, in the amount of $2,000.00 to pay these two checks, leaving a balance in the account at the close of these two items, of $1,050.29. That is the manner in which I handled each of these payments.

When a transfer of funds from Wichita Roy-
1965 alty Company account is shown on a schedule, I include the transferred funds from the royalty company under the question of deposit trust funds, which is the right hand division of this column. It is divided into three main divisions, first his personal funds, and the first division is trust funds and the third division is commingled balance or total of balance in the account. In the extreme right hand column I carry forward from time to time, during the respective periods of time covered, the balance of the account of G. W. Peckham. I have reconciled those balances with the bank records. When he gives a check, if it is a personal check, I charge it in the first division under personal funds, as long as there is funds, and deduct it from the balance shown as a balance in his personal funds as long as it lasts. I consider it checks drawn upon the trust funds and reduce the trust funds balance as long as any money was left, or until he replaces or replenishes his personal fund with a personal deposit, then I start the procedure over again, and apply his personal checks to his personal deposits as long as he has any money. As a result of that, I find, as shown on page .... of my record, the bank received transferred funds in payment of G. W. Peckham's personal debt to the bank, fifteen analysis of different dates, totaling $10,713.00. The next group is on pages ... and ..., showing an analysis of payments of the Stephens Royalty to J. T. Harrell, C. E. Basham, during the period of January 1, 1926 to February 2, 1926. That is an analysis of the commingled account from Janu-
1966 ary 1, to February 2, 1926. Following the same procedure I have outlined above, included in this schedule is four transfers of trust funds, being trust check No. 452, on January 4, amounting to $5,000.00;

trust check No. 458, January 11, $5,000.00; Trust check No. 461, dated January 18, 1926, $15,769.07; trust check No. 466, February 21, 1926, $400.00. In addition to these trust deposits, there were six personal deposits. I might as well list those items; January 9, 1926, $100.00; January 13, 1926, $931.88, being the oil runs on the Stephens. January 13, 1926, $931.88, with a notation, "Vernon oil runs," which I think is the same property, it is referred to in two different names. Two more deposits on January 30, in the amount of $1,411.16, an another on the same date, the notation says, "J. T. H. Dale Oil Refining Company, $1,235.99," and the last item, Page ..., $1,000.00. Those items show to be personal funds. All checks that were issued during that period of time are shown in detail as to date, payee and amount, and I had charged these checks to the personal funds so long as there was a balance in his personal account, then I applied the excess to the trust funds. During that period of time I show that there was paid by Mr. Peckham the following amounts: January 5, Highland Irrigation Company, $812.00; January 12, Highland Irrigation Company, $454.50; January 16, J. T. Harrell and C. E. Basham, $2,201.32; January 25, J. T. Harrell, C. E. Basham, $10,028.00; February 2, 1926, J. T. Harrell, C. E. Basham, $5,100.00. That last check was paid in part out of the trust funds to the extent of $3,074.15. I follow the same method of computation as I had in all these other schedules.

1967

The next group is two schedules on pages ... and ..., which are analysis, penetration on May 4, 1926, and August 10, 1926, respectively. Page ... is another main heading which I failed to include in my first explanation. It is an analysis on payments, on purchases of the Blummer and the Webb leases out of trust funds through the City National Bank. These items were handled as collection items through the City National Bank for the First National Bank at Shamrock. Two drafts in the amount of $8,008.00 and $4,904.90, these checks were payable to the City National Bank. The

next series of pages from ... to ... is a series of seven penetrations. On these respectives of January 19, 1927, March 16, 1927, May 9, 1927, October 19, 1927, February 15, 1928, September 27, 1928, January 12, 1929, following the same procedure as previously.

The next six pages, Nos. ... to ..., is an analysis of the payment of trust funds on the Marlborough indebtedness during the period of March 6, 1926, to July 23, 1926, the same method followed.

Those schedules that I have detailed here are referred to in my Defendant's Exhibit 186, and support certain statements which I there make. I have endeavored to correctly, and have correctly tabulated in Defendant's Exhibit 187 the matters therein con-
1968 tained, and I think they are correct.

Mr. Rogers:

We offer in evidence Defendant's Exhibit No. 187.

(Marked "DEFENDANT'S EXHIBIT 187" and reading as follows:)

INDEX.

Analysis of Trust Funds deposited by G. W. Peckham in his commingled account in the City National Bank.
Analysis of Trust Funds Paid to G. W. Peckham not Deposited in the City National Bank.
Recapitulation of Trust Funds paid to the City National Bank by G. W. Peckham on his Personal Indebtedness out of the Commingled Account.
Analysis of the Penetration on June 22, 1923.
Analysis of the Penetration on October 16, 1923.
Analysis of the Penetration on February 5, 1924.
Analysis of the Penetration on March 18, 1924.
Analysis of the Penetration on May 12, 1925.
Analysis of the Penetration on June 11, 1925.
Analysis of Payments on the Stephens Royalty to J. T. Harrell and C. E. Basham during Period of January 1, 1926 to February 2, 1926.
Analysis of the Penetration on May 4, 1926.
Analysis of the Penetration on August 10, 1926.
Analysis of Payments on Purchase of the Plummer and Webb Leases out of Trust Funds through the City National Bank.
Analysis of the Penetration on January 19, 1927.
Analysis of the Penetration on March 16, 1927.
Analysis of the Penetration on May 9, 1927.
Analysis of the Penetration on October 19, 1927.
Analysis of the Penetration on February 15, 1928.
Analysis of the Penetration on September 27, 1928.
Analysis of the Penetration on January 12, 1929.
Analysis of Payment of Trust Funds on the Marlborough Indebtedness during the period of March 6, 1926 to July 23, 1926.

Wichita Royalty Company in Account With City National Bank of Wichita Falls, Texas.

Period of April 10, 1923 to November 1, 1929.

Date Paid 1923	Trust Voucher No.	Payee	Explanation	Debit	Credit	Page No.
4-10	1291	G. W. Peckham	Transfer of Trust Funds (Royalty #71, Grimshaw)	$2,516.67		317
		Oil Runs received by the Trust	(Royalty #71, Grimshaw from 3-12-23 to 9-30-36)		$8,591.76	
5- 8	1310	G. W. Peckham	Transfer of Trust Funds (Salary)...	500.00		316
5- 8	1322	Geo. W. Peckham	Transfer of Trust Funds (Traveling Expense)	400.00		317
5-11	1325	Geo. W. Peckham	Transfer of Trust Funds (Royalty #71, Grimshaw)	2,533.00		317
5-16		Wichita Royalty Co. ...	(Check of G. W. Peckham for oil runs on Royalty #71 Grimshaw, 3/12-31 included in oil run total shown above)	234.05	234.05	
5-28		Wichita Royalty Co. ..	(Check of G. W. Peckham for oil runs on Royalty #71 Grimshaw—April runs by Humble included in oil run total above)	302.98	302.98	

1684

8- 3	34	G. W. Peckham	Transfer of Trust Funds (Salary)...	500.00		318
9- 1	54	G. W. Peckham	Transfer of Trust Funds (Salary)...	500.00		321
10-16	73	G. W. Peckham	Transfer of Trust Funds (Salary)...	500.00		321
11- 1	92	G. W. Peckham	Transfer of Trust Funds (Salary)...	500.00		322
12-24	134	G. W. Peckham	Transfer of Trust Funds (Salary)...	500.00		324
1924						
1-19	147	City Nat'l Bank	Transfer of Trust Funds (Returned to the Trust on 2-2-1924)	5,000.00		324
1-31	149	Geo. W. Peckham	Transfer of Trust Funds (Salary)...	500.00		325
2- 2	154	B. L. Fain	Transfer of Trust Funds (Payee's name indorsed and deposited into G. W. Peckham's account—Royalty #75 Luke Wilson).....	12,000.00		325
		Oil Runs received by the Trust	Detail (Royalty #75 Luke Wilson from 3/1/24 to 11-30-27 the effective date of the Sale) $25,476.04			
			Less oil payment which the Trust did not receive.. 6,250.00		19,226.04	
2- 2		Wichita Royalty Co. ...	(Return of $5,000.00 received on Trust check #147)		5,000.00	

Date Paid	Trust Voucher No.	Payee	Explanation	Debit	Credit	Page No.
2-11	160	G. W. Peckham	(Transfer of Trust Funds) Refunded to Trust on 2-16-24 C. R. M. #58			
2-16			Refund of cash transferred by check #160 as shown by C. R. M. #58	2,500.00		329
2-29	169	G. W. Peckham	(Studebaker Car)		2,500.00	
9-30-36			Sale Price of Studebaker Car C. R. M. #178	1,200.00		329
1924					555.00	
3- 4	171	G. W. Peckham	Transfer of Trust Funds (Salary)	500.00		329
3-18	185	G. W. Peckham	Transfer of Trust Funds (Royalty #75, Luke Wilson)	9,250.00		330
3-29	188	G. W. Peckham	Transfer of Trust Funds (Salary)	500.00		330
4-16		Wichita Royalty Co.	Check of G. W. Peckham (Oil runs from Royalty #75—Luke Wilson included in above total)	184.54	184.54	
4-16		Wichita Royalty Co.	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	141.38	141.38	
4-16		Wichita Royalty Co.	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	525.07	525.07	

4-29		Wichita Royalty Co.	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	275.55	275.55	
5- 1	205	G. W. Peckham	Transfer of Trust Funds (Salary)	500.00		330
5- 7		Wichita Royalty Co.	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	480.04	480.04	
5- 7		Wichita Royalty Co.	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	206.58	206.58	
5-15		Wichita Royalty Co.	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	182.44	182.44	
5-27		Wichita Royalty Co.	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	538.30	538.30	
6- 3		Wichita Royalty Co.	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	138.75	138.75	
6-14		Wichita Royalty Co.	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	74.63	74.63	
6-28	232	G. W. Peckham	Transfer of Trust Funds (Salary)	500.00		331

Date Paid	Trust Voucher No.	Payee	Explanation	Debit	Credit	Page No.
7- 9		Wichita Royalty Co.	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	135.42	135.42	
7-18		Wichita Royalty Co.	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	55.64	55.64	
8- 1	247	G. W. Peckham	Transfer of Funds (Salary)	500.00		331
8- 7		Wichita Royalty Co.	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	35.78	35.78	
8- 7		Wichita Royalty Co.	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	40.04	40.04	
9- 9		Wichita Royalty Co.	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	34.75	34.75	
9- 9		Wichita Royalty Co.	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	751.41	751.41	
9- 9		Wichita Royalty Co.	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	52.83	52.83	

10-18	272	G. W. Peckham	Transfer of Trust Funds (Salary)...	500.00		332
10-20		Wichita Royalty Co. ..	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	54.37	54.37	
10-20		Wichita Royalty Co. ...	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	45.00	45.00	
10-20		Wichita Royalty Co ...	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	47.36	47.36	
10-31	286	G. W. Peckham	Transfer of Trust Funds (Salary)...	500.00		332
11- 8		Wichita Royalty Co. ...	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	39.05	39.05	
11-13		Wichita Royalty Co.....	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	47.08	47.08	
11-29	304	G. W. Peckham	Transfer of Trust Funds (Salary)...	500.00		333
11-29		Wichita Royalty Co. ...	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	36.03	36.03	
12-10		Wichita Royalty Co. ...	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	197.83	197.83	

Date Paid	Trust Voucher No.	Payee	Explanation	Debit	Credit	Page No.
12-16		Wichita Royalty Co.	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	33.23	33.23	
12-23	317	G. W. Peckham	Transfer of Trust Funds (Royalty #78—Curtis Lane)	695.00		333
		Oil Runs received by the Trust	(Royalty #78—Curtis Lane Jan. 16, 1925, to Nov. 25, 1926)		38.25	
1925						
1- 3	320	G. W. Peckham	Transfer of Trust Funds (Salary)	500.00		333
1-10		Wichita Royalty Co.	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	34.66	34.66	
1-16		Wichita Royalty Co.	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	52.27	52.27	
1-16		Wichita Royalty Co.	Check of G. W. Peckham (Oil runs on Royalty #75—Luke Wilson included in above total)	31.04	31.04	
2- 5	338	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		335
2-11		Wichita Royalty Co.	Check of G. W. Peckham (Refund on commission)		31.25	

3- 5	347	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		335
4- 2	357	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		335
5- 2	370	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		336
5- 5	373	G. W. Peckham	Transfer of Trust Funds (Royalty #79—Routan)	2,500.00		336
		Oil Runs received by the Trust	(Royalty #79—Routan July 1, 1925, to Nov. 30, 1930)		419.23	
6- 2	378	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		378
6-24	385	G. W. Peckham	Transfer of Trust Funds (Royalty #80—Anderson)	6,000.00		385
		Oil Runs received by the Trust	(Royalty #80—Anderson, July 18, 1925, to Mch. 31, 1936).....		10,174.51	
6-29	387	G. W. Peckham	Transfer of Trust Funds (Royalty #80—Anderson)	5,000.00		339
7- 7	388	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		339
8- 3	400	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		339
9-10	411	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		340
9-30	422	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		340
10- 8	427	City National Bank....	Transfer of Trust Funds (Royalty #81—Callahan)	2,500.00		340

Date Paid	Trust Voucher No.	Payee	Explanation	Debit	Credit	Page No.
		Oil Runs received by the Trust	(Royalty #81—Callahan)		None	
10- 8	427		Transfer of Trust Funds (Refunded to Trust on November 10, 1925).	1,500.00		340
11- 2	433	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		341
11-10		Wichita Royalty Co.	Check of G. W. Peckham (Refund in part of funds transferred on Trust Ck. #427)		1,500.00	
12- 3	444	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		341
12-28	451	City National Bank	Transfer of Trust Funds (Royalty #83—Porter Ranch)	1,250.00		341
		Oil Runs received by the Trust	(Royalty #83—Porter Ranch)		None	
		Gross Rentals received by the Trust	(Check of G. W. Peckham dated 7-27-26)		111.67	
12-31 1926	453	G. W. Peckham	(C. R. M. #208, dated July 29, 1927) Transfer of Trust Funds (Salary)	400.00	115.81	342
1- 4	452	G. W. Peckham	Transfer of Trust Funds (Royalty #84—Stephens)	5,000.00		342

		Oil Runs received by the Trust	Royalty #84—Stephens from January 1, 1926, to April 1, 1930, the effective date of the sale)		21,527.30	
4- 1-1930		Humble Oil & Refining Company	(C. R. M. #279)		500.00	
4- 1-1930		Barkley & Meadows	(Cash $125.00 and Notes $2,750.00 J. E. #13 and 14)		2,875.00	
1926						
1-11	458	City National Bank	Transfer of Trust Funds (Royalty #84—Stephens)	5,000.00		342
1-18	461	City National Bank	Transfer of Trust Funds (Royalty #84—Stephens)	15,769.07		342
2- 2	466	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		343
2-10		Wichita Royalty Co.	Check of G. W. Peckham (Oil runs on Royalty #84—Stephens included in above total)	1,235.99	1,235.99	
2-24		Wichita Royalty Co.	Check of G. W. Peckham (Oil runs on Royalty #84—Stephens included in above total)	1,103.13	1,103.13	
2-27	477	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		343
3- 6	478	City National Bank	Transfer of Trust Funds (Marlborough)	17,623.70		343
3-31	485	City National Bank	Transfer of Trust Funds (Marlborough)	7,500.00		343

Date Paid	Trust Voucher No.	Payee	Explanation	Debit	Credit	Page No.
4- 3	487	G W. Peckham	Transfer of Trust Funds (Salary)	400.00		344
5-20	503	G. W. Peckham	Transfer of Trust Funds (Marlborough)	3,000.00		345
5-29	505	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		345
6- 2	507	City National Bank	Transfer of Trust Funds (Marlborough)	1,500.00		346
6-16	510	City National Bank	Transfer of Trust Funds (Marlborough)	4,500.00		346
7- 6	512	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		346
7-15	519	City National Bank	Transfer of Trust Funds (Marlborough)	1,000.00		347
8- 2	523	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		347
8- 2	525	City National Bank	Transfer of Trust Funds (Marlborough)	4,000.00		348
8-27	532	City National Bank	Transfer of Trust Funds (Marlborough)	4,357.58		348
9-30	537	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		348
10-30	545	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		349
11-20	550	City National Bank	Transfer of Trust Funds (Royalty #95—Anderson, $5,000.00 and Royalty #96—Polk, $2,500.00)	7,500.00		350

		Oil Runs received by the Trust	(Royalty #95 and 96)		None	
12- 2	552	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		350
12- 2	554	City National Bank	Transfer of Trust Funds (Royalty #83—Porter Ranch, $1,141.82, Royalty #93, Ellis County, Okla., $160.00, and Royalty #96, Polk land, $198.18)	1,500.00		350
		Oil Runs received by the Trust on Royalties #83, 93, and 96			None	
12- 8		City National Bank	Check of G. W. Peckham (Payment on Note #81992 of the Wichita Royalty Company)		500.00	
12-15	557	City National Bank	Trust Check #557 taking up draft from Texas State Bank at Eastland (Royalty #94, Hartley County)	1,920.00		
		Oil Runs received by the Trust on Royalty #94—Hartley County			None	
1927						
1- 4	556-A	G. W. Peckham	Transfer of Trust Funds (Marlborough)	538.16		350
1- 4	564	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		351
1-19	571	City National Bank	Transfer of Trust Funds (Marlborough)	2,000.00		351

Date Paid	Trust Voucher No.	Payee	Explanation	Debit	Credit	Page No.
2- 2	574	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		351
2-19	579	City National Bank	Transfer of Trust Funds (Marlborough)	2,500.00		352
3- 3	581	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		352
3- 8	582	City National Bank	Transfer of Trust Funds	500.00		352
3-16	583	City National Bank	Transfer of Trust Funds (Royalty #96—Polk Land)	301.82		353
			Oil Runs received by the Trust on Royalty #96		None	
3-23	591	City National Bank	Transfer of Trust Funds	2,000.00		353
4- 2	594	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		353
4-23	602	B. L. Fain	Indorsed by G. W. Peckham—Transfer of Trust Funds (Royalty #97—Roxanna Oil Payment)	1,000.00		354
			Oil Runs received by the Trust on Royalty #97 from March 1, 1927 to November 15, 1928		397.85	
4-30	604	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		354
5- 6	607	B. L. Fain	Indorsed by G. W. Peckham—Transfer of Trust Funds (Royalty #97—Roxanna Oil Payment)	500.00		354
5-16	610	B. L. Fain	Indorsed by G. W. Peckham—Transfer of Trust Funds (Royalty #97—Roxanna Oil Payment)	1,000.00		355

6- 8	614	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		355
6-18	620	City National Bank	Transfer of Trust Funds	1,200.00		356
7- 1	623	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		356
8- 1	630	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		356
8-16	635	City National Bank	Transfer of Trust Funds	1,500.00		356
8-31		City National Bank	Check of G. W. Peckham in payment of interest on Wichita Royalty Company note #1587		500.00	
9- 6	637	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		357
10-15	650	City National Bank	Transfer of Trust Funds	2,400.00		357
10-19		On Note	Check of G. W. Peckham payment on Note #36 of Wichita Royalty Company Principal, $1,076.00, Interest #260.00		1,336.00	
11- 5	653	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		357
11-25	657	City National Bank	Transfer of Trust Funds	1,800.00		358
11-25		City National Bank	Check of G. W. Peckham payment on Wichita Royalty Company Note #1587		1,500.00	
12- 5	659	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		358
12-21	670	G. W. Peckham	Transfer of Trust Funds (Royalty #83—Porter Ranch)	147.33		359
12-27	672	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		358

Date Paid 1928	Trust Voucher No.	Payee	Explanation	Debit	Credit	Page No.
1-31	684	G. W. Packham	Transfer of Trust Funds (Salary)	400.00		359
2-15		W. C. Duncan	(Plaintiff's Exhibit #146 being Cashier's Check #12328 issued by the Wichita State Bank and Trust Co. and payable to W. C. Duncan, indorsed payable to the order of G. W. Peckham for Bristow Royalty—W. C. Duncan, also indorsed by G. W. Peckham)	6,000.00		
2-15		City National Bank	Check of G. W. Peckham payment on Wichita Royalty Company Note #4558		3,485.33	
3- 6	692	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		359
3-31	701	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		359
4- 6	702	City National Bank	Transfer of Trust Funds (Traveling)	548.12		360
4-11	706	G. W. Peckham	Transfer of Trust Funds (Abstracts)	169.75		360
4-23	710	City National Bank	Transfer of Trust Funds	1,850.00		360
5- 1	713	G. W. Peckham	Transfer of Trust Funds (Salary)	400.00		361
5-21	718	G. W. Peckham	Transfer of Trust Funds (Automobile)	140.68		361

6-12	720	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		361
7- 9	727	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		361
8- 7	738	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		362
9-10	747	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		362
9-27	752	City National Bank	Transfer of Trust Funds (Interest)..	424.66		362
9-27		City National Bank	Check of G. W. Peckham payment on Note of Wichita Royalty Company, #11167		424.66	
10-12	754	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		363
11- 1	762	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		363
11-30	767	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		363
12-31	775	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		363
1929						
2- 5	785	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		364
3- 8	793	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		364
3-26	797	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		364
5- 1	806	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		365
5-31	813	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		365
7- 9	821	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		365
8- 2	829	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		365
9- 5	837	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		366

Date Paid	Trust Voucher No.	Payee	Explanation	Debit	Credit	Page No.
10- 2	843	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		366
11- 1	852	G. W. Peckham	Transfer of Trust Funds (Salary)...	400.00		366
		Totals		$198,882.76	$88,656.88	
				88,656.88		
		Net Balance		$110,225.88		

Note: The above account is subject to such change of debits and credits as the Court may determine, including computation of interest.

Wichita Royalty Company in Account With G. W. Peckham.

Period of March 10, 1923, to November 1, 1929.

Date Paid 1923	Trust Voucher No.	Payee	Explanation	Debit
			Balance as per statement made with the City National Bank for period of April 10, 1923, to November 1, 1929	$110,225.88
3-10	1253	City National Bank	(Indorsed Credit Account B. L. Fain) Voucher Notation: To apply on last payment of Royalty Interest #71, 3/128ths total production 160 acres, Grimshaw Farm. Young County, Texas	2,500.00
5-21	1272	City National Bank	(Voucher Notation: Traveling expense for Geo. W. Peckham, Trustee of Wichita Royalty Company)	500.00
4- 2	1280	Geo. W. Peckham	(Voucher Notation: Executive Salary for March, 1923)	500.00
6- 2	1339	Geo. W. Peckham	(Voucher Notation: Executive Salary for month of May)	500.00
7- 5	13	Geo. W. Peckham	(Voucher Notation: Executive Salary for month of June)	500.00
12- 1	115	Geo. W. Peckham	(Voucher Notation: Salary-Executive for the month of November, 1923)	500.00

1701

Date Paid	Trust Voucher No.	Payee	Explanation	Debit
1924				
3-13	180	Geo. W. Peckham	(Voucher Notation: To Reimbursement in Insurance Premium on Studebaker Touring Car—Amount exactly ½ of Premium)	30.95
5-13	221	Geo. W. Peckham	(Voucher Notation: Salaries-Executive)	500.00
7- 3	237	Security National Bank.	(Voucher Notation: To purchase of interest in lots 9 and 10, Block 41, J. H. White lands, Archer County, Texas)	11,000.00
7-26	246	Security National Bank.	(Voucher Notation: To purchase of interest in lots 9 and 10, Block 41, J. H. White lands, Archer County, Texas)	10,000.00
9- 3	261	Geo. W. Peckham	(Voucher Notation: Salaries-Executive)	500.00
1926				
3-10	479	Security National Bank	(Marlborough)	6,000.00
5- 5	497	Geo. W. Peckham	(Voucher Notation: Salaries-Executive, for the month of April, 1926)	400.00
8-20	529	Geo. W. Peckham	(Voucher Notation: Salaries-Executive, for the month of August, 1926)	400.00
12-22	556	Geo. W. Peckham	(Voucher Notation: Interest Expense: To apply on two notes of $7,738.50 at the rate of 8% per annum, this interest applying on period of	

			9-10-25 to 9-19-26—Highland Irrigation Company Notes)	700.00
1927				
4-12	598	B. L. Fain	(Voucher Notation: Purchase Oil Runs to apply on to purchase of $4,200.00 in oil runs due from Roxanna on Milner—Wilbarger County, Purchase Price $3,000.00)	500.00
11- 3	643	G. W. Peckham	(Voucher Notation: Salaries-Executive, for the month of September, 1927)	400.00
1929				
2- 2	778	G. W. Peckham	(Voucher Notation: Taxes paid on the Porter Ranch—Our Proportion)	21.63
			Total	$139,341.24

[illegible] FIRST NATIONAL BANK OF
[illegible] U. S. PROGRAM'S PERSONAL
[illegible] OF THE COMMINGLED ACCOUNT

[illegible]	[illegible]	[illegible]
[illegible]	$ 390.00	Trust check [illegible]
[illegible]	279.51	Trust check [illegible]
[illegible]	67.01	Trust check [illegible]
[illegible]	[illegible]	Trust check [illegible]
[illegible]	[illegible]	Trust check #333
[illegible]	[illegible]	Trust check #378
[illegible]	[illegible]	Trust check #407
[illegible]	[illegible]	Trust check #525
[illegible]	[illegible]	Trust check #513
[illegible]	[illegible]	Trust check #583
[illegible]	10.00	Trust check #607
[illegible]	$20.00	Trust check #650
[illegible]	713.53	Plaintiff's Exhibit #146
[illegible]	33.4[illegible]	Trust checks #727, 738 and 747
1-18-45	[illegible]	Trust check #775
TOTAL	$ 10,213.85	
	3067.72	
	$ 13,281.57	

747 Salary
738 Salary
727 Salary
775 Salary

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

Period of May 11, 1923, to June 22, 1923.

1923	Detail	Personal Funds Checks	Personal Funds Deposits	Personal Funds Balance	Trust Funds Checks	Trust Funds Deposits	Trust Funds Balance	Commingled Balance
5-11 Balance at beginning of business on May 11, 1923				$1,488.94				
5-11 Trust Check #1325 payable to G. W. Peckham: Voucher notation (to apply to last payment of Royalty Interest #71—Grimshaw tract, Young Co., Texas, $2,500.00, interest $33.33)						$2,533.33		
5-11 Phone Co.		$41.60		1,947.34			$2,533.33	$4,480.67
5-12 Deposit—(8-17-D-Perpetual Royalty Co.)	$1,000.00							
5-12 Deposit—(Interest)	33.33		$1,033.33					
5-11			500.00					
5-12 Deposit (7)	2,000.00							
5-12 Deposit (7)	500.00		2,500.00					
5-12 J. E. Vaeth		637.50						
5-12 City Nat'l Bank		215.33						
5-12 City Nat'l Bank		2,000.00		2,627.84			2,533.33	5,161.17
5-14 Deposit (7)			702.03					
5-14 Deposit (7)	1,269.43							
5-14 Deposit	510.00		1,779.43					
5-14 Bessie Day		30.00						
5-14 Hurley & Fletcher		5.00						
5-14 Cash		50.00						
5-14 City Nat'l Bldg.		65.00		4,959.30			2,533.33	7,492.63
5-15 Independent Gro.		5.00						
5-15 Perkins Timberlake		19.75						
5-15 Note—(On Note & Interest of G. W. Peckham #37474, Principal $1,000.00, Interest $8.55)		1,008.55		3,926.00			2,533.33	6,459.33
5-16 Wichita Royalty Co. 3-12-31, Royalty #71—(Oil Runs on Grimshaw)					$234.05			
5-16 City Nat'l Bank		125.00		3,801.00			2,299.28	6,100.28
5-17 Wichita Floral Co.		7.00		3,794.00			2,299.28	6,100.28
5-18 Deposit (7)			637.50					
5-18 County Clerk (Recording Fee)		1.50						
5-18 Perpetual Royalty Syndicate—(Oil Runs on Grinshaw 2-12 to 4-1-23)		175.51						
5-18 Perkins Timberlake		10.00						
5-18 Independent Gro.		10.00		4,234.49			2,299.28	6,533.77
5-19 Deposit ($7,000.00 (7))	223.94							
5-19 Deposit ($7,000.00 (7))	180.94		403.98					
5-19 On Note—$144.36, Interest $745.30		889.66		3,748.81			2,299.28	6,048.09
5-21 Cash		4.00						
5-21 McConnell Bros.		22.05						
5-21 Perkins Timberlake		29.75		3,693.01			2,299.28	5,992.29

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

Period of May 15, 1923, to June 22, 1923 (Cont'd).

1923		Detail	Personal Funds Checks	Personal Funds Deposits	Personal Funds Balance	Trust Funds Checks	Trust Funds Deposits	Trust Funds Balance	Commingled Balance
5-22	Bessie Day (Steno.)		$ 30.00						
5-22	B. L. Fain (Com.)		666.00						
5-22	Cash (Draft)		1,215.00		$1,782.01			$2,299.28	$4,081.29
5-23	Deposit (7)			$1,513.33	3,295.34			2,299.28	5,594.62
5-24	Deposit (7)	756.66							
	Deposit (7)	16.00							
	Deposit (7)	1.00		773.66					
5-24	King Royalty Co. (Part Pur. Price)		3,026.66						
5-24	Deposit (7)	1,530.00							
	Deposit (7)	750.00		2,280.00	3,322.34			2,299.28	5,621.62
5-25	B. L. Fain (Com.)		750.00						
5-25	Noble-Little Hdw. Co.		7.25						
5-25	Cash		75.00						
5-25	B. L. Fain (Com.)		500.00		1,990.09			2,299.28	4,289.37
5-25	Guy C. Raley (Taxes #373)		85.36						
5-26	B. L. Fain (Com.)		677.77						
5-26	Bessie Day (Steno.)		30.00						
5-26	W. B. McClurkan Co.		146.45		1,050.51			2,299.28	3,349.79
5-28	H. J. Anderson (Taxes)		143.52						
5-28	Dr. Guest		8.00						
5-28	Wichita Royalty Co. (Oil Runs on Grimshaw for April runs by Humble) Royalty #71				898.99	302.98		1,995.30	2,895.29
5-29	J. C. Winfry		10.00						
5-29	Perpetual Royalty Syndicate (Oil Runs for April on Grimshaw run by Humble)		101.00		787.99			1,996.30	2,784.29
6- 1	Cash		1.48						
6- 1	Mack Heck		6.30						
6- 1	Wichita Co. Water Improvement District #1		38.37						
6- 1	Bessie Day (Steno.)		30.00						
6- 1	Cash		50.00		661.84			1,996.30	2,658.14
6- 2	Deposit (17 D Perpetual Royalty Co.)	1,000.00							
6- 2	Deposit—Perpetual Royalty Int.	40.00		1,040.00	1,701.84				3,698.14
6- 4	City Nat'l Cigar Co.		2.25						
6- 4	City Nat'l Bank		750.00		949.59			1,996.30	2,945.89
6- 5	Deposit (7)	1,816.00							
	Deposit (7)	5.46		1,821.46	2,771.05			1,996.30	4,767.35
6- 6	Tolowa Royalties, Inc.		200.00						
6- 6	Tolowa Royalties, Inc.		400.00						
6- 6	B. L. Fain		684.01						
6- 6	B. L. Fain		250.00		1,237.04			1,996.30	3,233.34

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

Period of May 15, 1923, to June 22, 1923 (Cont'd).

	Detail	Personal Funds Checks	Personal Funds Deposits	Personal Funds Balance	Trust Funds Checks	Trust Funds Deposits	Trust Funds Balance	Commingled Balance
1923								
6- 7	Deposit (7)		$4,053.33					
6- 7	Security Nat'l Bank	$ 500.00						
6- 7	Kay—Akin & Kenley	155.00		$4,635.37			$1,996.30	$6,631.67
6- 8	B. L. Fain	5,066.66						
6- 8	Western Union	11.26						
6- 8	Bessie Day	30.00						
6- 8	Keim Motor Co.	10.25		—o—	$482.80		1,513.50	1,513.50
6- 9	Deposit (1402—Escrow No. 1662 Nat'l Royalty Co. W. S. A.)		2,500.00					
6- 9	S. W. Bell Telephone Co.	11.20		2,488.80			1,513.50	4,002.30
6-11	Oil & Gas Journal	6.00						
6-11	City Nat'l Bank	214.67		2,268.13			1,513.50	3,781.63
6-12	Deposit (Note)		750.00					
6-12	W. H. Peckham (Payment for Fain on Lumsey Deere 5 Acres)	1,510.00						
6-12	W. H. Peckham	515.25						
6-12	City Nat'l Bldg. (June Rent)	65.00		927.88			1,513.50	2,441.38
6-13	Deposit (Note (19))		6,000.00					
6-13	Cash	1,000.00						
6-13	B. L. Fain	503.33						
6-13	B. L. Fain	33.00						
6-13	Bessie Day	500.00						
6-13	Bessie Day	30.00						
6-13	B. L. Fain	615.00						
6-13	Cash	1,000.00						
6-13	City Nat'l Bank (Int. on W. H. Peckham's Note)	81.20		3,165.35			1,513.50	4,678.85
6-14	Deposit (7) #7910		750.00	3,915.35			1,513.50	5,428.85
6-15	King Royalty Co.	5,000.00		—o—	1,084.65		428.85	428.85
6-19	Deposit (7) #8950		6,000.00					
6-19	City Nat'l Bank	2,000.00		4,000.00			428.85	4,428.85
6-20	Cash	675.00		3,325.00			428.85	3,753.85
6-21	B. L. Fain	615.00						
6-21	F. O. Harrell	26.66		2,683.34			428.85	3,112.19
6-22	I. C. Speney	23.60						
6-22	Check of G. W. Peckham credited on the liability of G. W. Peckham in the City Nat'l Bank, Note #37717, Principal $3,000.00, Int. $50.60	3,050.60		—o—	390.86		37.99	37.99

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

Period of September 1, 1923, to October 16, 1923.

1923		Detail	Personal Funds Checks	Personal Funds Deposits	Personal Funds Balance	Trust Funds Checks	Trust Funds Deposits	Trust Funds Balance	Commingled Balance
9- 1	Balance at beginning of business on September 1, 1923				$13,466.92				$13,466.92
9- 1	Deposit (8)			$2,000.00					
9- 1	Trust Check #54 payable to G. W. Peckham with voucher notation "Salaries-Executive Month of August						$500.00		
9- 1	Deposit (8)	$10,311.00							
9- 1	Deposit (8)	2,053.33							
9- 1	Deposit (8)	135.45		12,499.78					
9- 1	E. E. Scannell		229.40						
9- 1	D. M. Certified Check #964 for $8,000.00 and Check #965 for $4,515.19 both payable to Perpetual Royalty Syndicate		12,515.19						
9- 1	Van Dyke Motor Co.		1,702.95		13,519.16			$500.00	14,019.16
9- 4	Deposit (4) (Escrow #1846 W. C. Cook W. S. A.)			4,125.00					
9- 4	Deposit (13) Cashier's Check	1,800.00							
9- 4	Deposit Less V. L. Notes	1,529.65		270.35					
9- 4	Deposit (7) #9093	20.60							
9- 4	Deposit (7)	135.45							
9- 4	Deposit (7)	5,000.00							
9- 4	Deposit (7)	1,126.66		6,282.11					
9- 4	W. H. Peckham		1,540.00						
9- 4	W. H. Peckham		2,000.00						
9- 4	W. H. Peckham		1,026.66						
9- 4	W. J. Daugherty		67.50						
9- 4	Cash		7,000.00						
9- 4	Telephone Co.		40.55						
9- 4	Carter & Balyeat		1,400.00						
9- 4	City Nat'l Bank		1,005.00						
9- 4	Anita Cleveland		25.00						
9- 4	Hurley & Fletcher		75.00						
9- 4	Greever Wynne & Maer		61.90						
9- 4	Check Missing		4,515.19						

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

Period of September 1, 1923, to October 16, 1923 (Cont'd).

1923	Detail	Personal Funds Checks	Personal Funds Deposits	Personal Funds Balance	Trust Funds Checks	Trust Funds Deposits	Trust Funds Balance	Commingled Balance
9- 4	W. B. McClurkan (Acct. to Date)	$ 11.50		$5,428.32			$ 500.00	$5,928.32
9- 5	Anita Cleveland (Salary to 9-29-33)	100.00						
9- 5	J. H. White (Oil Runs on Goltry 1st ½ of August by Texas Co.)	18.44						
9- 5	J. H. White (Estimated balance of Oil Runs on Goltry 1st ½ of August)	342.41		4,967.47			500.00	5,467.47
9- 6	Check Missing	10.21		4,957.26			500.00	5,457.26
9- 8	City Nat'l Bldg.	65.00		4,892.26			500.00	5,392.26
9-14	B. L. Fain	1,000.00		3,892.26			500.00	4,392.26
9-24	Deposit (13) W. S. A. Interest 8% on $4,125.00 from 9-1 to 9-24 credit on escrow Peckham-Cook—This paid by Jos. H. White		$21.05					
9-24	D. M. E. J. Power Co.—8-31-23 returned twin unpaid—issued for credit on Peckham and Cook escrow. Pro fees $2.57 Credit acct. of G. W. Peckham. F. O. Y. has check	4,125.00		—o—	$211.69		288.31	288.31
10-16	Deposit (7)		3.77					
10-16	Deposit—Trust check #73 payable to G. W. Peckham with voucher notation "Salaries-Executive to 10-1-23					$500.00		
10-16	City Nat'l Bank—Interest on charged off note of G. W. Peckham, see page ..... of testimony	283.34		—o—	279.57		508.74	508.74

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

Period of February 2, 1924, to February 5, 1924.

1924	Detail	Personal Funds Checks	Personal Funds Deposits	Personal Funds Balance	Trust Funds Checks	Trust Funds Deposits	Trust Funds Balance	Commingled Balance
2- 2	Balance at beginning of business on February 2, 1924..			$ 975.92				$ 975.92
	Trust Check #154 payable to B. L. Fain with voucher notation as follows: To Purchase of Royalty interests in Tonkoma and Creek County, Oklahoma: Lumsey Deere Farm, Carmichael Farm, Beverlin Farm, McDaniel Farm, Goltry Farm. Notation in inks as follows: See letter from G. W. Peckham to Wichita Royalty Co., dated March 17, 1924. This money to apply on Wilson royalty instead of above					$12,000.00		
2- 2	B. L. Fain (January 1 to 15 oil runs on Goltry sold to King)	$ 20.11						
2- 2	B. L. Fain (Oil runs 12/16 to 31 Goltry sold to King)..	18.59						
2- 2	Anita Cleveland	25.00						
2- 2	W. H. Peckham	857.15						
2- 2	W. H. Peckham	2,000.00						
2- 2	Perkins Timberlake Co.	10.18						
2- 2	Wichita Royalty Co. (Return of $5,000.00 received by G. W. Peckham on Co. Check #147 (charged against trust fund only because the result is the same)				$5,000.00			
2- 2	W. H. Peckham	500.00						
2- 2	Keim Motor Co.	2.80						
2- 2	McClurkan & Co.	31.80		-o-	2,489.71		$4,510.29	4,510.29
2- 4	Deposits (7)		$333.33					
2- 4	W. H. Peckham	750.00						
2- 4	City Nat'l Bank (Cashier's Check #85473)	1,500.00		-o-	1,916.67		2,593.62	2,593.62
2- 5	B. L. Fain	650.00						
2- 5	Interest (Interest on Note #44544 of G. W. Peckham with City Nat'l Bank of Wichita Falls)	67.67		-o-	717.67		1,875.95	1,875.95

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

March 18, 1924.

1924		Personal Funds				Trust Funds			Commingled Balance
		Detail	Checks	Deposits	Balance	Checks	Deposits	Balance	
3-18	Balance at beginning of business on March 18, 1924...				$11,033.48				$11,033.48
3-18	Deposit (6) #6711 Notation Dft. Raking on Grand Junction, Colo.			$3,750.00					
3-18	Deposit (7) #7748 Trust Check #185 payable to G. W. Peckham with voucher notation as follows: (To cover difference in purchase price of Tonkoma—Deere Royalties our check #154 and purchase price of $27,500.00 for 1/8 of royalty on Luke Wilson 80 acres, Block 27, Ray-Mossie-Featherston and Maer-Staniforth Leases. Total Cash payment $21,250.00 to be paid from oil $6,250.00)						$9,250.00		
3-18	Deposit	$35.00							
3-18	Deposit	7.36		42.36					
3-18	Deposit (19) J. T. H.—Massie			$75,000.00					
3-18	Wichita Falls Golf and Country Club		$ 200.00						
3-18	L. F. Wilson (Bal. of purchase price of Royalty).....		80,000.00						
3-18	Geo. Peckham		1,000.00						
3-18	G. W. Peckham		4,000.00						
3-18	Cash		100.00						
3-18	Note and Interest (Payment on Note #47675 of W. H. Peckham, principal $10,084.33, rebate $57.58).....		10,026.75		—o—	$5,500.91		$3,749.09	$3,749.09

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

May 5, 1925, to May 12, 1925.

1925	—	Personal Funds Detail	Personal Funds Checks	Personal Funds Deposits	Personal Funds Balance	Trust Funds Checks	Trust Funds Deposits	Trust Funds Balance	Commingled Balance
5- 5	Balance at beginning of business on May 5, 1925.....				$5,509.45				$5,509.45
5- 5	Deposit (10) Trust Check #373 payable to G. W. Peckham with voucher notation as follows: To purchase of 1/16 of the Royalty in the Routan land 117 acres in Archer County, Texas	$2,500.00							
5- 5	Deposit (10)	$2,500.00							
5- 5	Deposit (10)	5,000.00							
5- 5	Deposit (10)	4,000.00							
5- 5	Deposit (10)	1,300.00							
5- 5	Deposit (10)	2,200.00							
5- 5	Deposit (10)	2,500.00		$17,500.00					
5- 5	Tipton's Drug Store		$ 3.50						
5- 5	O. W. Harvey		69.36						
5- 5	J. H. Massie		1,500.00						
5- 5	J. H. Massie		410.00						
5- 5	Auto Apartments		26.74						
5- 5	City Nat'l Bank (Safety Box #927).....		10.00						
5- 5	Cash		1,200.00						
5- 5	Wichita Club		6.80		19,783.05			$2,500.00	22,283.05
5- 6	Munger Auto Co.		159.55						
5- 6	Muse and Robertson (¾ your interest in Wolf 400 acre Royalty-Alice Phillips Well)		4,250.00						
5- 6	Wichita Falls Building and Loan Assn.		100.00						
5- 6	Wichita Falls Building and Loan Assn.		100.00						
5- 6	Wichita Falls Building and Loan Assn.		50.00						
5- 6	Ray & Massie (1/12th interest in deal with Allen M-R, Land)		2,500.00						
5- 6	W. H. Peckham (Profits on 560 acre Wolf Royalty sold to date)		2,400.00						
5- 6	W. H. Peckham (Profits on 40 acres Major Pool Archer County)		250.00						

Analysis of G. W Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

May 5, 1925, to May 12, 1925 (Cont'd).

1925		Detail	Checks	Personal Funds Deposits	Balance	Checks	Trust Funds Deposits	Balance	Commingled Balance
5- 6	Thos. Holcomb (Little Royalty sold Ray and Massie)		$ 740.00						
5- 6	Telephone Co.		24.10		$9,209.40			$2,500.00	$11,709.40
5- 7	M. M. Garrett (Sale of 40 acres in Major Pool in Archer County)		333.33						
5- 7	Shaphard-Crouch		35.00						
5- 7	F. O. Harrell		5,000.00						
5- 7	Hartsook & Stripling		3.00		3,838.07			2,500.00	6,338.07
5- 8	T. C. Scales, Jr. (Sale of 1/8 Royalty on 200 acres Wolf Land)		250.00						
5- 8	Cash		800.00						
5- 8	Telephone Co.		2.50		2,785.57			2,500.00	5,285.57
5- 9	M. & F. Parkway		5.00						
5- 9	City Nat'l Bank (Cashier's Check #102360)		825.00						
5- 9	City Nat'l Bldg. (May Rent)		65.00						
5- 9	City Nat'l Bank (Cashier's Check #102359)		1,200.00		690.57			2,500.00	3,190.57
5-11	Anita Cleveland		30.00						
5-11	Langford Motor Co. (Ford Coupe)		707.40		-o-	$46.83		2,453.17	2,453.17
5-12	Deposit (8)	$1,550.00							
5-12	Deposit (8)	2,633.00		$4,183.00					
5-12	Collector of Internal Revenue		509.89						
5-12	Collector of Internal Revenue		474.91						
5-12	Security Nat'l Bank		200.00						
5-12	You (Payment on Note #60576 of G. W. Peckham, Principal $4,000.00, Interest $56.00)		4,056.00						
5-12	Thos. Holcomb (Bal. Little Royalty)		329.12		-o-	1,386.92		1,066.25	1,066.25

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

Period of June 2, 1925, to June 11, 1925.

1925	Detail	Personal Funds Checks	Personal Funds Deposits	Personal Funds Balance	Trust Funds Checks	Trust Funds Deposits	Trust Funds Balance	Commingled Balance
6- 2	Balance at beginning of business on June 2, 1925			$2,331.89				$2,331.89
6- 2	Deposit (10) Trust Check #378 in favor of G. W. Peckham with voucher notation as follows: Executive Salary for May					$400.00		
6- 2	Wichita Bldg. and Loan	$250.00						
6- 2	Telephone Co.	16.70		2,065.19			400.00	2,465.19
6- 3	Cash	200.00						
6- 3	Tipton Drug Store	3.50						
6- 3	Security Nat'l. Bank	200.00						
6- 3	Wichita Club	3.40						
6- 3	Greener Wynne & Maer	24.70						
6- 3	Keim Motor Co.	.75						
6- 3	W. B. McClurkan	10.00		1,622.84			400.00	2,022 84
6- 4	E. C. De Montel	60.00						
6- 4	City Nat'l Bank	25.00						
6- 4	Phone Co.	3.80						
6- 4	Auto Apartments	15.00		1,519.04			400.00	1,919.04
6- 6	City Nat'l Bldg.	65.00						
6- 6	Interest—Interest on note #61679 of G. W. Peckham $20.00, interest on note #61579 of G. W. Peckham $200.00	220.00		1,234.04			400.00	1,634.04
6- 8	B. L. Fain	1,000.00						
6- 8	Anita Cleveland	30.00						
6- 8	County Clerk—Archer Co.	1.50		202.54			400.00	602.54
6-11	You—Interest on note #61679 of G. W. Peckham	66.67						
6-11	Cash	5.00						
6-11	R. &. M. Parkway	5.00						
6-11	Anita Cleveland	500.00		—o—	$374.13		25.87	25.87

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

Period of January 1, 1926, to February 2, 1926.

			Personal Funds			Trust Funds		Commingled
1926	Detail	Checks	Deposits	Balance	Checks	Deposits	Balance	Balance
1- 4	Balance at the beginning of business on January 4, 1926			$878.70				$ 878.70
4	Deposit (8) (Trust Check #452 payable to G. W. Peckham—Royalty #84 Stephens)					$5,000.00		
4	Mrs. H. H. Brown	$ 30.00		848.70			$5,000.00	5,848.70
5	Highland Irrigation Co.—(Prin. 4 notes $175.00, $700.00. Int. on Series $112.00, Lots 11, 12, 13 and 14, Block 44A)	812.00		36.70			5,000.00	5,036.70
6	Langford Motor Co.	10.45						
6	Cash	800.00						
6	Auto Storage Co.	12.05						
6	Western Union	1.08		—o—	$786.88		4,213.12	4,213.12
7	Wichita Floral Co.	20.00						
7	Wichita Falls Golf Club	20.63						
7	Landon-Hill Company	82.90						
7	Munger Auto Company	94.12						
7	J. P. & E. M. Sommerville	24.72						
7	Renfro Drug Company	3.50						
7	Keim Motor Company	6.30						
7	W. B. McClurkan	40.75						
7	Perkins-Timberlake Co.	90.11						
7	W. A. Freear Furn. Co.	39.50						
7	Wichita Club	22.00		—o—	444.53		3,768.59	3,768.59
8	Wichita Falls Medical & Surgical Clinic	25.00						
8	Noble-Little Hardware Co.	30.00						
8	Art Jewelry Company	218.00						
8	Wichita Falls Building & Loan	250.00						
8	Wichita General Hospital	107.90						
8	Greever-Wynne & Maer	65.39						
8	Cash	500.00			1,196.29		2,572.30	2,572.30
9	Deposit (8)		$100.00					
9	Auto Tire Company	4.75						
9	Chamber of Commerce	1.50						
9	Chamber of Commerce	100.00						
9	E. C. De Montel	15.00						
9	City National Building	65.00						
9	Mrs. H. H. Brown	30.00		—o—	116.25		2,456.05	2,456.05
11	Deposit (7) (Trust Check #458 favor of City National Bank—Voucher Notation Producing Royalties #84 (Stephens)					5,000.00		
11	Curlee Land "K-82"	2,567.75		—o—			4,888.30	4,888.30
12	Eva B. Roberts	49.00						
12	Highland Irrigation (Marlborough)	454.50					4,384.80	4,384.80

1926		Detail	Checks	Deposits	Balance	Checks	Deposits	Balance	Balance
1- 4	Balance at the beginning of business on January 4, 1926				$878.70				$ 878.70
4	Deposit (8) (Trust Check #452 payable to G. W. Peckham—Royalty #84 Stephens)						$5,000.00		
4	Mrs. H. H. Brown		$ 30.00		848.70			$5,000.00	5,848.70
5	Highland Irrigation Co.—(Prin. 4 notes $175.00, $700.00. Int. on Series $112.00, Lots 11, 12, 13 and 14, Block 44A)		812.00		36.70			5,000.00	5,036.70
6	Langford Motor Co.		10.45						
6	Cash		800.00						
6	Auto Storage Co.		12.05						
6	Western Union		1.08		—o—	$786.88		4,213.12	4,213.12
7	Wichita Floral Co.		20.00						
7	Wichita Falls Golf Club		20.63						
7	Landon-Hill Company		82.90						
7	Munger Auto Company		94.12						
7	J. P. & E. M. Sommerville		24.72						
7	Renfro Drug Company		3.50						
7	Keim Motor Company		6.30						
7	W. B. McClurkan		40.75						
7	Perkins-Timberlake Co.		90.11						
7	W. A. Freear Furn. Co.		39.50						
7	Wichita Club		22.00		—o—	444.53		3,768.59	3,768.59
8	Wichita Falls Medical & Surgical Clinic		25.00						
8	Noble-Little Hardware Co.		30.00						
8	Art Jewelry Company		218.00						
8	Wichita Falls Building & Loan		250.00						
8	Wichita General Hospital		107.90						
8	Greever-Wynne & Maer		65.39						
8	Cash		500.00			1,196.29		2,572.30	2,572.30
9	Deposit (8)			$100.00					
9	Auto Tire Company		4.75						
9	Chamber of Commerce		1.50						
9	Chamber of Commerce		100.00						
9	E. C. De Montel		15.00						
9	City National Building		65.00						
9	Mrs. H. H. Brown		30.00		—o—	116.25		2,456.05	2,456.05
11	Deposit (7) (Trust Check #458 favor of City National Bank—Voucher Notation Producing Royalties #84 (Stephens)						5,000.00		
11	Curlee Land "K-82"		2,567.75		—o—			4,888.30	4,888.30
12	Eva B. Roberts		49.00						
12	Highland Irrigation (Marlborough)		454.50					4,384.80	4,384.80
13	Deposit (½ C. E. B. runs Stephens S-40 acres 1st ½ of December runs. 88,669 bbls., 186,376 Dale Oil & Rfg. Co.) (4)			931.88					

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

Period January 1, 1926, to February 2, 1926 (Cont'd).

			Personal Funds			Trust Funds		
	Detail	Checks	Deposits	Balance	Checks	Deposits	Balance	Commingled Balance
1926								
1-13	Deposit (19) Vernon Oil Runs		$931.88					
13	Security National Bank	$ 200.00						
13	Telephone Company	13.60		$1,650.16			$4,384.80	$6,034.96
14	Wotola Royalties Inc. K-33	262.65						
14	Wotola Royalties Inc. K-32	308.00						
14	C. T. Francis	125.00		954.51			4,384.80	5,339.31
15	Miss Bridgit Silva	49.00						
15	Point Breeze Club	5.00		900.51			4,384.80	5,285.31
16	J. T. Harrell & C. E. Basham (Vernon Royalty) (Stephens)	2,201.32						
16	Municipal Gas Co.	32.06						
16	Mrs. H. H. Brown	30.00		—o—	$1,362.87		3,021.93	3,021.93
18	Deposit—Trust Check #461 favor of City National Bank, Voucher Notation as follows: #84 to purchase of ¼ royalty under Stephens 40 acres operated by Staley et al and Barclay & Meadows in South Vernon field, total cost $25,769.07, less paid $10,000.00					$15,769.07		
18	Gulf Refining Company	25.13		—o—	25.13		18,765.87	18,765.87
19	Tolowa K-35	1,630.79						
19	Wotola K-36	232.97		—o—	1,863.76		16,902.11	16,902.11
20	Eva B. Roberts	49.00		—o—	49.00		16,853.11	16,853.11
25	J. T. Harrell & C. E. Basham K-79 (Stephens Royalty)	10,028.00		—o—	10,028.00		6,825.11	6,825.11
26	Wichita General Hospital	95.90						
26	Mrs. H. H. Brown	30.00						
26	Jim Robinson	3.60		—o—	129.50		6,695.61	6,695.61
27	Cash	2,100.00		—o—	2,100.00		4,595.61	4,595.61
28	Eva B. Roberts	49.00		—o—	49.00		4,546.61	4,546.61
30	Deposit (8)	$1,235.99						
30	Deposit (8)	175.17	1,411.16					
30	Deposit (18) J. T. H. Dale Oil & Rfg. Co.		1,235.99					
30	Guy C. Raley	117.27						
30	M. H. Glover	10.00						
30	General Hospital	55.65						
30	Mrs. H. H. Brown	30.00		2,434.23			4,546.61	6,980.84
2- 1	W. R. Hyer, Tax Collector	112.44						
1	Eva Roberts	50.00		2,271.79			4,546.61	6,818.40
2	Deposit (7) 7,890 Trust Check #466 favor of G. W. Peckham, Voucher Notation Executive salary for Jan., 1926					400.00		
2	Deposit (7)		1,000.00					
2	Renfro Drug Company	6.95						

1-13	Deposit (19) Vernon Oil Runs							
13	Security National Bank		$ 200.00					
13	Telephone Company		13.60		$1,650.16		$4,384.80	$6,034.96
14	Wotola Royalties Inc. K-33		262.65					
14	Wotola Royalties Inc. K-32		308.00					
14	C. T. Francis		125.00		954.51		4,384.80	5,339.31
15	Miss Bridgit Silva		49.00					
15	Point Breeze Club		5.00		900.51		4,384.80	5,285.31
16	J. T. Harrell & C. E. Basham (Vernon Royalty) (Stephens)		2,201.32					
16	Municipal Gas Co.		32.06					
16	Mrs. H. H. Brown		30.00		—o—	$1,362.87	3,021.93	3,021.93
18	Deposit—Trust Check #461 favor of City National Bank, Voucher Notation as follows: #84 to purchase of ¼ royalty under Stephens 40 acres operated by Staley et al and Barclay & Meadows in South Vernon field, total cost $25,769.07, less paid $10,000.00					$15,769.07		
18	Gulf Refining Company		25.13		—o—	25.13	18,765.87	18,765.87
19	Tolowa K-35		1,630.79					
19	Wotola K-36		232.97		—o—	1,863.76	16,902.11	16,902.11
20	Eva B. Roberts		49.00		—o—	49.00	16,853.11	16,853.11
25	J. T. Harrell & C. E. Basham K-79 (Stephens Royalty)		10,028.00		—o—	10,028.00	6,825.11	6,825.11
26	Wichita General Hospital		95.90					
26	Mrs. H. H. Brown		30.00					
26	Jim Robinson		3.60		—o—	129.50	6,695.61	6,695.61
27	Cash		2,100.00		—o—	2,100.00	4,595.61	4,595.61
28	Eva B. Roberts		49.00		—o—	49.00	4,546.61	4,546.61
30	Deposit (8)	$1,235.99						
30	Deposit (8)	175.17		1,411.16				
30	Deposit (18) J. T. H. Dale Oil & Rfg. Co.			1,235.99				
30	Guy C. Raley		117.27					
30	M. H. Glover		10.00					
30	General Hospital		55.65					
30	Mrs. H. H. Brown		30.00		2,434.23		4,546.61	6,980.84
2- 1	W. R. Hyer, Tax Collector		112.44					
1	Eva Roberts		50.00		2,271.79		4,546.61	6,818.40
2	Deposit (7) 7,890 Trust Check #466 favor of G. W. Peckham, Voucher Notation Executive salary for Jan., 1926					400.00		
2	Deposit (7)			1,000.00				
2	Renfro Drug Company		6.95					
2	Tolowa		1,081.49					
2	Smith Drug Company		3.00					
2	Wotola		154.50					
2	J. T. Harrell & C. E. Basham (Stephens Royalty)		5,100.00		—o—	3,074.15	1,872.46	1,872.46

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

Period of April 3, 1926, to May 4, 1926.

1926		Detail	Checks	Personal Funds Deposits	Balance	Checks	Trust Funds Deposits	Balance	Commingled Balance
4- 3	Balance at the beginning of business on April 3, 1926..				$2,420.55				$2,420.55
3	Deposit (9) (Trust Check #487 favor of G. W. Peckham, Voucher Notation: Salaries, Executive for the month of March)	$400.00					$400.00		
3	Deposit (9)	200.00		$200.00					
3	Mrs. H. H. Brown		$30.00						
3	Lesley Bros., Inc.		52.85						
3	Decorators		3.00						
3	B. L. Fain—⅛ Interest in Dry Hole in the N½ of N. E. ¼ & S. W. ¼ of S. E. ¼ Section 4,1S-8 W. Okla..		1,000.00						
3	Check Book		1.00						
3	Wichita Club		20.10						
3	City National Building		65.00		1,448.60			$400.00	1,848.60
6	Noble-Little Hardware Co.		19.60						
6	Munger Auto Company		48.45						
6	Golf Club		20.63						
6	Perkins-Timberlake		88.21		1,271.71			400.00	1,671.71
7	E. C. DeMontel		110.00						
7	Dr. Guest		32.00						
7	Phone Company		18.27						
7	Auto Storage Company		11.50		1,099.94			400.00	1,499.94
8	Eldora Bunnenburg		25.00						
8	Chas. Scribner & Sons		35.10		1,039.84			400.00	1,439.84
9	Earnest A. Cox		4.50		1,035.34			400.00	1,435.34
10	Elizabeth Billinger		20.00		1,015.34			400.00	1,415.34
14	Gulf Refining Company		16.92						
14	First National Bank——Burkburnett (Rental to 4-20-27 on Graves 20 acre lease)		20.00		978.42			400.00	1,378.42
16	Point Breeze Club		5.00						
16	Beauvis Typewriter Co.		3.50		969.92			400.00	1,369.92
17	Elizabeth Billinger		20.00		949.92			400.00	1,349.92
20	E. A. Cox		17.21						
20	E. C. DeMontel		13.00		919.71			400.00	1,319.71
24	Security National Bank		200.00						
24	Elizabeth Billinger		20.00		693.71			400.00	1,099.71
26	Deposit—Rentals			$4.38					
26	A. B. Maples, Agt.—Insurance Premium		624.40		79.69			400.00	479.69
27	Chas. E. Watson		65.43						

1926								
4- 3	Balance at the beginning of business on April 3, 1926							
3	Deposit (9) (Trust Check #487 favor of G. W. Peckham, Voucher Notation: Salaries, Executive for the month of March)	$400.00				$400.00		
3	Deposit (9)	200.00		$200.00				
3	Mrs. H. H. Brown		$30.00					
3	Lesley Bros., Inc.		52.85					
3	Decorators		3.00					
3	B. L. Fain—⅛ Interest in Dry Hole in the N½ of N. E. ¼ & S. W. ¼ of S. E. ¼ Section 4,1S-8 W. Okla.		1,000.00					
3	Check Book		1.00					
3	Wichita Club		20.10					
3	City National Building		65.00		1,448.60		$400.00	1,848.60
6	Noble-Little Hardware Co.		19.60					
6	Munger Auto Company		48.45					
6	Golf Club		20.63					
6	Perkins-Timberlake		88.21		1,271.71		400.00	1,671.71
7	E. C. DeMontel		110.00					
7	Dr. Guest		32.00					
7	Phone Company		18.27					
7	Auto Storage Company		11.50		1,099.94		400.00	1,499.94
8	Eldora Bunnenburg		25.00					
8	Chas. Scribner & Sons		35.10		1,039.84		400.00	1,439.84
9	Earnest A. Cox		4.50		1,035.34		400.00	1,435.34
10	Elizabeth Billinger		20.00		1,015.34		400.00	1,415.34
14	Gulf Refining Company		16.92					
14	First National Bank——Burkburnett (Rental to 4-20-27 on Graves 20 acre lease)		20.00		978.42		400.00	1,378.42
16	Point Breeze Club		5.00					
16	Beauvis Typewriter Co.		3.50		969.92		400.00	1,369.92
17	Elizabeth Billinger		20.00		949.92		400.00	1,349.92
20	E. A. Cox		17.21					
20	E. C. DeMontel		13.00		919.71		400.00	1,319.71
24	Security National Bank		200.00					
24	Elizabeth Billinger		20.00		699.71		400.00	1,099.71
26	Deposit—Rentals			$4.38				
26	A. B. Maples, Agt.—Insurance Premium		624.40		79.69		400.00	479.69
27	Chas. E. Watson		65.43					
27	Debit Advice		4.38		9.88		400.00	409.88
28	Texhoma		61.85		-0-	$51.97		348.03
29	Hines Oil Company		2.85		-0-		345.18	345.18
30	Mrs. T. T. Reese		50.00		-0-		295.18	295.18
5- 1	Elizabeth Billinger		20.00		-0-		275.18	275.18
4	Renfro Drug Company		5.25					
4	City National Bank (Rent on Deposit Box)		10.00					
4	Wichita Club		5.95					
4	City National Bldg. (May Rent)		65.00					
4	Keim Motor Company		1.50		-0-		187.48	187.48

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

Period of August 2, 1926, to August 10, 1926.

1926	Detail	Personal Funds Checks	Personal Funds Deposits	Personal Funds Balance	Trust Funds Checks	Trust Funds Deposits	Trust Funds Balance	Commingled Balance
8- 2	Balance at beginning of business on August 2, 1926...			$419.09				$419.09
8- 2	Deposit (7)—Trust Check #523 payable to G. W. Peckham with voucher notation as follows: Executive Salary for Month of July, 1926					$400.00		
8- 2	Deposit (7)—Trust Check #525 payable to City National Bank with voucher notation as follows: Notes Payable—to apply on Note due 9-19-26 to Highland Irrigation Co., for land in fee					4,000.00		
8- 2	Cash	$50.00						
8- 2	Renfro Drug	1.75						
8- 2	E. E. Scannell (Check Missing)	46.95						
8- 2	E. E. Scannell (Check Missing)	179.19		141.20			$4,400.00	4,541.20
8- 3	Security Nat'l Bank	200.00						
8- 3	Jim Cassell	4.00		—o—	$ 62.80		4,337.20	4,337.20
8- 4	Armon Brown	100.00						
8- 4	Western Union	.71		—o—	100.71		4,236.49	4,236.49
8- 5	City Nat'l Bldg.	65.00						
8- 5	W. G. Mackeckney (Trees)	146.60						
8- 5	Wichita Club	2.00						
8- 5	Keim Motor Co.	5.05		—o—	218.65		4,017.84	4,017.84
3- 6	Wichita Clinic Hospital	45.00						
8- 6	Telephone Co.	12.60						
8- 6	Wichita Building & Loan	260.00		—o—	317.60		3,700.24	3,700.24
8- 7	Filling Station—Orient Gas Co.	6.12						
8- 7	Hines Oil Co.	9.71						
8- 7	Sharpe Bros.	1.05						
8- 7	Point Breeze Works	5.00						
8- 7	Wichita Floral Co.	6.00						
8- 7	Dr. L. I. Lucy	4.00		—o—	31.91		3,668.33	3,668.33
8- 9	Munger Auto Co.	39.40		—o—	39.40		3,628.93	3,628.93
8-10	Interest (Payment of Interest on Note #81324 of G. W. Peckham)	550.00		—o—	550.00		3,078.93	3,078.93

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

November 20, 1926.

		Personal Funds				Trust Funds		Commingled
1926		Detail	Checks	Deposits	Balance	Checks	Deposits	Balance	Balance
11-20	Balance at the beginning of business on November 20, 1926				$6,850.65				$6,850.65
	Deposits—Trust Check #000—Voucher notation as follows: Royalties owned: Property #95 being 3/16th interest in the leasehold estate, 80 acres east half of Lot 10, North Anderson Ranch, S. P. Survey, Archer County, Texas	$5,000.00							
	Property #96: to apply on purchase of ¼ royalty on the southwest 60 acres of E. Polk land, abstract 717 of William Polk, Pre-emption Survey, Archer County, Texas, also ¼ of the 7/8ths leasehold estate on the west 40 acres of the same land	2,500.00					$7,500.00		
11-20	Mrs. H. H. Brown		$ 25.00						
11-20	H. G. Helgerson (Rent for December)		75.00						
11-20	City National Bank (Plummer Section 12, P. K. 21; Draft lease attached from First National Bank, Shamrock)		8,008.00						
11-20	City National Bank (Webb P. K. 15-Draft lease attached from First National Bank-Shamrock)		4,904.90		—o—	$6,162.25			1,337.35

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

January 19, 1927.

1927		Detail	Personal Funds Checks	Personal Funds Deposits	Personal Funds Balance	Trust Funds Checks	Trust Funds Deposits	Trust Funds Balance	Commingled Balance
1-19	Balance at beginning of business on January 19, 1927..				$1,581.41				$1,581.41
1-19	Deposit—Trust Check #571 payable to the City Nat'l Bank with voucher notation as follows: Land Improvements: To apply on paving excess Strip Malborough addition						$2,000.00		
1-19	Yourselves—Pk-55 (Payment on Note 87506 of G. W. Peckham, Principal $2,500.00, Interest $6.12.....		$2,506.12						
1-19	Mrs. H. H. Brown		25.00		—o—	$949.71		$1,050.29	1,050.29

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

March 16, 1927.

1927		Detail	Personal Funds Checks	Personal Funds Deposits	Personal Funds Balance	Trust Funds Checks	Trust Funds Deposits	Trust Funds Balance	Commingled Balance
3-16	Balance at beginning of business on March 16, 1927...				$1,274.42				$1,274.42
3-16	Deposit (7)	$200.00							
3-16	Deposit (7)	375.00							
3-16	Deposit (7)	7.00		$582.00					
3-16	Deposit—Trust Check #583 payable to the City National Bank with voucher notation as follows: Royalties owned—Property #96, last payment on purchase of ¼ of royalty on the S. W. 60 acres of E. Polk land, abstract 717 of William Polk Preemption Survey, Archer County, Texas. Also ¼ of the ⅞ leasehold estate on the W. 40 acres of the same land. This payment together with payments on checks Nos. 550 and 554 makes a total cost of $3,000.00 for the above interest.....						$301.82		
3-16	On Note (Payment on Note #85175 of G. W. Peckham)		$1,500.00						
3-16	Texas Electric Service Company (For Frigidaire)....		577.00		—o—	$220.58		$81.24	81.24

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

Period of May 6, 1927, to May 9, 1927.

1927	Detail	Personal Funds Checks	Personal Funds Deposits	Personal Funds Balance	Trust Funds Checks	Trust Funds Deposits	Trust Funds Balance	Commingled Balance
5- 6	Balance at beginning of business on May 6, 1927.....			$64.48				$64.48
5- 6	Deposit (7)—Trust check #607 payable to B. L. Fain. Payee's name indorsed by G. W. Peckham and deposited by G. W. Peckham. Voucher notation as follows: Purchase of oil runs—to apply on purchase of $4,200.00 in oil runs due from Roxanna Petroleum Corp. of the J. T. Milner land—Wilbarger County. Purchase Price $3,000.00					$500.00		
5- 6	Henry Vaughan (Wheeler County Drilling Reports)..	$10.00						
5- 6	United Royalties (Rental Lot 6, Block 1462 Young County, Heatheely Chambers 475 acre sub.).....	40.00		14.48			$500.00	514.48
5- 7	Cash	75.00		-o-	$ 60.52		439.48	439.48
5- 9	Security Nat'l Bank	200.00						
5- 9	Perkins Timberlake Co. (Account)	37.53						
5- 9	Wichita Club	1.95						
5- 9	City National Bank (Rent on Deposit Box #927).....	10.00						
5- 9	Wichita Floral Co.	4.50						
5- 9	Wichita Falls Clinic Hospital	4.00		-o-	257.98		181.50	181.50

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

Period October 15, 1927, to October 19, 1927.

1927	Detail	Personal Funds Checks	Personal Funds Deposits	Personal Funds Balance	Trust Funds Checks	Trust Funds Deposits	Trust Funds Balance	Commingled Balance
10-15	Balance at beginning of business on October 15, 1927..			$ 39.91				$ 39.91
10-15	Deposit (7)—Thomason "Us" Trust Check #650 payable to the City Nat'l Bank with voucher notation as follows: Notes Payable—to apply on money borrowed from City Nat'l Bank					$2,400.00		
10-15	Mrs. A. D. Ford	$ 25.00		14.91			$2,400.00	2,414.91
10-19	Orchid Shop, Inc.	165.65						
10-19	Telephone Co.	26.55						
10-19	On Note (Payment on Note #194 of G. W. Peckham)	520.00		—o—	$ 697.29			
10-19	On Note (Payment on Note #36 of the Wichita Royalty Co., Principal $1,076.00, Interest $260.00.....				1,336.00		366.71	366.71

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

February 15, 1928.

1928	Detail	Personal Funds Checks	Personal Funds Deposits	Personal Funds Balance	Trust Funds Checks	Trust Funds Deposits	Trust Funds Balance	Commingled Balance
2-15	Balance at beginning of business on February 15, 1928			$ 75.93				$ 75.93
2-15	Deposit (7)—Plaintiff's Exhibit #146 being Cashier's Check #12328 issued by the Wichita State Bank & Trust Co. and payable to W. C. Duncan, indorsed payable to the order of G. W. Peckham for Bristow Royalty—W. C. Duncan—also indorsed by G. W. Peckham					$6,000.00		
2-15	Cox and Co.—Auto Repairs	$ 40.60						
2-15	De Montel & Sanford	331.00						
2-15	Cash (Traveling Expense)	100.00						
2-15	City National Bank (Payment on Wichita Royalty Co. Note #4558)				$3,485.33			
2-15	Note and Interest (Payment on Note #3331 of G. W. Peckham, Principal $510.00, Interest $3.33)	513.33		—o—	909.00		$1,605.67	1,605.67

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

Period of July 9, 1928, to September 27, 1928.

		Detail	Personal Funds Checks	Personal Funds Deposits	Personal Funds Balance	Trust Funds Checks	Trust Funds Deposits	Trust Funds Balance	Commingled Balance
1928									
7- 9	Balance at beginning of business on July 9, 1928				$247.25			$247.25	
7- 9	Deposit (7) Trust check #727 payable to G. W. Peckham with voucher notation as follows: Executive salaries for month of June, 1928						$400.00		
7- 9	Deposit (7)			$1,500.00					
7- 9	Lesley Bros.		$ 5.85						
7- 9	Electric Light Co.		21.48						
7- 9	P. B. M. Co.		28.56		1,691.36			400.00	$2,091.36
7-10	Cash (Traveling Expense)		200.00						
7-10	J. P. & E. M. Sommerville		24.72						
7-10	Haley Drug Co.		8.03						
7-10	Whites Pharmacy		1.00						
7-10	R. O. Kenley		10.00		1,447.61			400.00	1,847.61
7-11	Shaphard—Crouch Co.		25.00						
7-11	Security Nat'l Bank		200.00		1,222.61			400.00	1,622.61
7-13	Phone Co.		18.54		1,204.07			400.00	1,604.07
7-13	Mrs. A. D. Ford		25.00		1,179.07			400.00	1,579.07
7-14	Co. Clerk—Archer Co.		1.00		1,178.07			400.00	1,578.07
7-20	Deposit (7)	$ 300.00							
	Deposit (7)	62.50		362.50					
7-20	Deposit (7)	2,500.00							
7-20	Deposit (7)	2,500.00		5,000.00					
7-20	Note & Interest (Payment on Note #10625 on G. W. Peckham, Principal $484.78 and Interest $9.00		493.78						
7-20	W. H. Peckham		3,100.00		2,946.79			400.00	3,346.79
7-21	Deposit (5)			450.00					
7-21	Mrs. A. D. Ford		25.00						
7-21	B. L. Fain		1,500.00		1,871.79			400.00	2,271.79
7-23	Martin Littrell		750.00						
7-23	T. C. Scales (Com. on Haytir)		250.00		871.79			400.00	1,271.79
7-24	B. L. Fain (Haytir Royalty)		925.00						
7-24	Cash		1.00		—o—	$54.21		345.79	345.79
7-31	Mrs. A. D. Ford		25.00		—o—	25.00		320.79	320.79
8- 2	City Nat'l Bldg.		65.00			65.00		255.79	255.79
8- 3	Deposit (7) Malborough Addition			300.00					
8- 3	Fritz Motor Co.		15.95						
8- 3	Point Breeze Boat Works		5.00						
8- 3	Clyde E. Taylor		1.00		278.05			255.79	533.84
8- 4	Lesley Bros.		1.25						
8- 4	Wichita Club		32.25						
8- 4	Payne Auto Storage		33.46						
8- 4	Mrs. A. D. Ford		25.00						

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

Period of July 9, 1928, to September 27, 1928 (Cont'd).

1928	Detail	Personal Funds Checks	Personal Funds Deposits	Personal Funds Balance	Trust Funds Checks	Trust Funds Deposits	Trust Funds Balance	Commingled Balance
8- 4 Texas Electric Service Co.		$ 16.35		$ 169.74			$ 255.79	$ 425.53
8- 6 Municipal Gas Co.		2.53						
8- 6 Wichita Floral Co.		10.00		157.21			255.79	413.00
8- 7 Deposit (7)—Trust check #738 payable to G. W. Peckham with voucher notation as follows: Executive Salaries for Month of July, 1928				157.21		$ 400.00	655.79	813.00
8- 8 Wichita Falls Water Dept.		12.68						
8- 8 City Nat'l Bank (Cashier's Check to Mrs. G. W. Peckham)		200.00		—o—	$ 55.47		600.32	600.32
8-16 Phone Co.		16.05		—o—	16.05		584.27	584.27
8-20 Cash		1.00		—o—	1.00		583.27	583.27
8-21 Cash		.50		—o—	.50		582.77	582.77
8-29 Cash		100.00						
8-29 Cash		25.00		—o—	125.00		457.77	457.77
8-30 Deposit (W. H. Peckham)			$2,500.00					
8-30 Deposit (19)—J. T. H.—B. L. Fain			6,000.00					
8-30 Mrs. A. D Ford		75.00		8,425.00			457.77	8,882.77
8-31 Debit Advice—Telegram to Menard regarding Ck. 7940		.48		8,424.52			457.77	8,882.29
9- 1 Bevins Nat'l Bank		7,940.00		484.52			457.77	942.29
9-10 Deposit (10) McWhirter #1092 Texland Oil Co.	$3,242.50							
9-10 Deposit (10) McWhirter #1092 Bevins Nat'l Bank	1,297.00							
9-10 Deposit (10) McWhirter #1092 W. H. Peckham	4.75		4,544.25					
9-10 Deposit (10) McWhirter #1092 Trust Check #747 payable to G. W. Peckham with voucher notation as follows: Salaries-Executive for Month of August 1928	400.00					400.00		
9-10 Brit Cranfill		205.00						
9-10 City Nat'l Bldg.		65.00		4,758.77			857.77	5,616.54
9-11 Security Nat'l Bank		200.00						
9-11 Wichita Club		49.05						
9-11 W. B. McClurkan		8.20						
9-11 Phone Co.		15.50						
9-11 Electric Light Co.		9.60		4,476.42			857.77	5,334.19
9-12 Mrs. H. H. Brown		25.00						
9-12 W. H. Peckham (Refund on Menard Royalty)		68.00		4,383.42			857.77	5,241.19
9-13 Deposit (10) Geo. B. Ray Inv.			5,400.00					
Collector of Internal Revenue		5.58						
9-13 Geo. B. Ray (Refund on Menard Royalty)		666.25						
9-13 Collector of Internal Revenue		5.58						

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

Period of July 9, 1928, to September 27, 1928 (Cont'd).

1928		Detail	Personal Funds Checks	Personal Funds Deposits	Personal Funds Balance	Trust Funds Checks	Trust Funds Deposits	Trust Funds Balance	Commingled Balance
9-13	Lesley Bros.		$ 1.60						
9-13	Payne Auto Storage		16.70						
9-13	Duffie & Lufburrough (Your Part of Geo. B. Ray 5403 Note on Menard County)		2,700.00						
9-13	Geo. B. Ray		1,169.00						
9-13	Robt. W. Peckham		175.00		$5,043.71			$857.77	$5,901.48
9-14	C. R. Cooper (For 80 Acre lease Menard Co.)		3,040.00						
9-14	Security N. Bank		868.50		1,135.21			857.77	1,992.98
9-15	City Water Dept.		3.98						
9-15	Mrs. H. H. Brown		25.00		1,106.23			857.77	1,964.00
9-18	Point Breeze Boat Works—Storage for August		5.00		1,101.23			857.77	1,959.00
9-25	Deposit (10)			$1,800.00					
9-25	S. A. Cochran (Com. on Menard Royalty sold to Shaw)		600.00		2,301.23			857.77	3,159.00
9-26	Deposit			5,800.00					
9-26	S. A. Cochran (Bal. Com. on Menard Lease sold to Shaw)		150.00						
9-26	E. L. Mears		100.00		7,851.23			857.77	8,709.00
9-27	Deposit (7) (W. R. Co.) Trust check #752 payable to the City Nat'l Bank with voucher notation as follows: Interest Expense—Interest on Notes held by City Nat'l Bank						$424.66		
9-27	Mrs. H. H. Brown		25.00						
9-27	Bravins Hotel		31.35						
9-27	B. L. Fain (Your Part 2700 paid by Ray on Menard Lease ½ in $920.00)		1,350.00						
9-27	B. L. Fain (Com. on Harper Royalty Menard County)		160.00						
9-27	B. L. Fain (Sale of Menard Lease)		29.00						
9-27	B. L. Fain (Profit on Menard Lease sold to Shaw)		965.00						
9-27	B. L. Fain (Com. on Echert Royalty)		648.50						
9-27	B. L. Fain (Com. on Menard County)		487.00						
9-27	Yourselves (Traveler's Checks)		1,005.00						
9-27	City Nat'l Bank (Credit on Wichita Royalty Note #11167)					$424.66			
9-27	On Note (Payment on Note #10626 of G. W. Peckham)		3,163.78		—o—	13.40		844.37	844.37

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

Period of December 31, 1928, to January 12, 1929.

			Personal Funds			Trust Funds		
1928		Detail	Checks	Deposits	Balance	Checks	Deposits	Balance	Commingled Balance
12-31	Balance at beginning of business on December 31, 1928				$ 165.30				$ 165.30
12-31	Deposit (7)—Trust Check #775 payable to G. W. Peckham with voucher notation as follows: Salaries Executive for the Month of December, 1928						$400.00		
12-31	Cash		$ 5.00		160.30			$400.00	560.30
1929									
1- 2	Mrs. H. H. Brown		25.00						
1- 2	Cash		75.00		60.30			400.00	460.30
1- 3	Security Nat'l Bank		100.00		-o-	$ 39.70		360.30	360.30
1- 4	Deposit (7) Robert W. Peckham			$2,800.00					
1- 4	Texas Electric Service Company		13.35						
1- 4	Williams-Cox Co.		32.55						
1- 4	Cash		200.00		2,554.10			360.30	2,914.40
1- 5	E. E. Scannell (Check Missing)		150.00						
1- 5	Lesley Bros. Inc.		.75						
1- 5	Whites Pharmacy		5.15						
1- 5	Lincoln National Life Gas Co.		208.47						
1- 5	Western Union		2.31						
1- 5	City Nat'l Bldg.		55.00						
1- 5	Wichita Club		23.85						
1- 5	Payne Auto Storage		34.50		2,074.07			360.30	2,434.37
1- 7	Mrs. H. H. Brown		25.00						
1- 7	Riley Auto Service		3.15		2,045.92			360.30	2,406.22
1- 8	Great Southern Ins. Co.		125.25						
1- 8	City of Wichita Falls, Water Dept.		1.97						
1- 8	Panhandle Tire Co.		1.25		1,917.45			360.30	2,277.75
1-10	J. P. & E. M. Sommerville		24.72		1,892.73			360.30	2,253.03
1-11	Security Nat'l Bank		100.00						
1-11	Southwestern Bell Telephone Co.		20.90		1,771.83			360.30	2,132.13
1-12	Deposit—1396 McWhirter	$75.00							
1-12	Deposit	7.50							
1-12	Deposit	2.16		84.66					
1-12	Municipal Gas Co.		17.38						
1-12	Wichita Falls Clinic Hospital		60.00						
1-12	On Note (Interest $413.33) (Payment on note #15363 of G. W. Peckham, Principal $1,639.57, Interest $373.76		2,013.33		-o-	234.22		126.08	126.08

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

Period of March 6, 1926, to July 23, 1926.

1926		Detail	Personal Funds Checks	Personal Funds Deposits	Personal Funds Balance	Trust Funds—Marlborough Checks	Trust Funds—Marlborough Deposits	Trust Funds—Marlborough Balance	Commingled Balance
3- 6	Balance at beginning of business on March 6, 1926				$ 225.20				$225.20
6	Deposit (8) Trust check #478 payable to City Nat'l Bank, Marlborough						$17,623.70		
6	J. T. Harrell & C. E. Basham, Stephens Royalty		$5,060.00		—	$4,834.80		$12,788.90	12,788.90
8	Skidmon Dairy		12.80						
8	Cash		200.00		—	212.80		12,576.10	12,576.10
9	W. H. Peckham—Marlborough		11,811.85		—	11,811.85		764.25	764.25
10	Mrs. H. H. Brown		30.00		—	30.00		734.25	734.25
11	Auto Storage Co.		20.02						
11	Telephone Co.		10.90			30.92		703.33	703.33
12	Deposit (19) Escrow 2669 W. S. A.	$1,500.00							
12	Less Note of J. G. A.	251.00							
		1,249.00							
	Less Credit of J. G. A.	431.00		$818.00					
12	Munger Auto Co.		6.00						
12	Wichita Falls Bldg. and Loan		250.00		562.00			703.33	1,265.33
13	Federal Tire Co.		3.10						
13	W. H. Peckham (For release of Welch contract on Marlborough addition)		100.00						
13	E. C. De Montel		2.90						
13	Mrs. H. H. Brown		30.00						
13	Point Breeze Club		5.00		421.00			703.33	1,124.33
16	Cash		400.00		21.00			703.33	724.33
17	Deposit (4) 4472			400.00					
17	Gulf Refining Co.		8.07		412.93			703.33	1,116.26
20	Mrs. H. H. Brown		30.00						
20	Collector of Internal Revenue, Wife ¼		33.58						
20	Collector of Internal Revenue, Husband ¼		33.58		315.77			703.33	1,019.10
22	Shaphard-Crouch Co.		47.50		268.27			703.33	971.60
25	Charity Birdman		10.00		258.27			703.33	961.60
27	Clifford Maers		2.90						
27	Mrs. H. H. Brown		30.00		225.37			703.33	928.70
29	E. E. Scannell		400.00						
29	J. P. & E. M. Sommerville		24.72		—	199.35		503.98	503.98
31	Deposit us (7)—Trust check #485 Payable to City Nat'l Bank—Marlborough						7,500.00	8,003.98	8,003.98
4- 1	Rev. L. G. Snell		5.00						
1	Security N. Bank		200.00						
1	J. T. Harrell & G. W. Peckham—Indorsed J. T. Harrell & C. E. Basham		5,087.00		—	5,292.00		2,711.98	2,711.98

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

Period of March 6, 1926, to July 23, 1926 (Cont'd).

1926		Detail	Personal Funds Checks	Personal Funds Deposits	Personal Funds Balance	Trust Funds—Marlborough Checks	Trust Funds—Marlborough Deposits	Trust Funds—Marlborough Balance	Commingled Balance
4- 2	Jim Cassell		$ 3.45						
2	Wichita Falls Bldg. and Loan		250.00						
2	Renfro Drug Co.		5.50						
2	Dr. Thornburg		15.00						
2	W. B. McClurkan		17.48		-0-	$291.43		$2,420.55	$2,420.55
3	Deposit (9) Trust check #487 favor G. W. Peckham—Salary	$400.00							
3	Deposit (9)	200.00		$600.00					
3	Mrs. H. H. Brown		30.00						
3	Lesley Bros. Inc.		52.85						
3	Decorators		3.00						
3	B. L. Fain—1/8 interest in dry hole in N 1/2 of NE 1/4 of SW 1/4 of SE1/4 Sec. 4-1S-8W. Okla.		1,000.00						
3	Check Book		1.00						
3	Wichita Club		20.10						
3	City Nat'l Bldg.		65.00		-0-	571.95		1,848.60	1,848.60
6	Noble-Little Hdw. Co.		19.60						
6	Munger Auto Co.		48.45						
6	Golf Club		20.63						
6	Perkins Timberlake		88.21		-0-	176.89		1,671.71	1,671.71
7	E. C. De Montel		110.00						
7	Dr. Guest		32.00						
7	Phone Co.		18.27						
7	Auto Storage Co.		11.50		-0-	171.77		1,499.94	1,499.94
8	Eldora Bunnenburg		25.00						
8	Chas. Scribner Sons		35.10		-0-	60.10		1,439.84	1,439.84
9	Earnest A. Cox		4.50		-0-	4.50		1,435.34	1,435.34
10	Elizabeth Bellengers		20.00		-0-	20.00		1,415.34	1,415.34
14	Gulf Refining Co.		16.92						
14	First Nat'l Bank, Burkburnett—Rental to 4-20-27 on Groves 20 acre lease		20.00		-0-	36.92		1,378.42	1,378.42
16	Point Breeze Club		5.00						
16	Branvais Typewriter Co.		3.50		-0-	8.50		1,369.92	1,369.92
17	Elizabeth Bellenger		20.00		-0-	20.00		1,349.92	1,349.92
20	E. A. Cox		17.21						
20	E. C. De Montel		13.00		-0-	30.21		1,319.71	1,319.71
24	Security N. Bank		200.00						
24	Elizabeth Bellenger		20.00		-0-	220.00		1,099.71	1,099.71
26	Deposit—Lease Rentals			4.38					
26	A. B. Maples—Agent, Insurance Premium		624.40		-0-	620.02		479.69	479.69

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

Period of March 6, 1926, to July 23, 1926 (Cont'd).

			Personal Funds			Trust Funds—Marlborough			
1926		Detail	Checks	Deposits	Balance	Checks	Deposits	Balance	Commingled Balance
4-27	Chas. E. Watson		$ 65.43						
27	Debit Advice—Rentals		4.38		-o-	$ 69.81		$ 409.88	$ 409.88
28	Texhoma		61.85		-o-	61.85		348.03	348.03
29	Hines Oil Co.		2.85		-o-	2.85		345.18	345.18
30	Mrs. T. T. Reese		50.00		-o-	50.00		295.18	295.18
5- 1	Elizabeth Bellinger		20.00		-o-	20.00		275.18	275.18
4	Renfro Drug Co.		5.25						
4	City Nat'l Bank—Rent on Deposit Box		10.00						
4	Wichita Club		5.95						
4	City Nat'l Bldg.—May Rent		65.00						
4	Keim Motor Co.		1.50		-o-	87.70		187.48	187.48
5	Deposit (9)	$100.00							
5	Deposit (9)	10.00		$ 110.00					
5	Perkins Timberlake		29.39						
5	Elizabeth Bellenger		20.00		$ 60.61			187.48	248.09
6	Phone Co.		21.60						
6	Automobile Storage Co.		18.60		20.41			187.48	207.89
7	Cato Tire Co.		1.25		19.16			187.48	206.64
8	Deposit (7)	400.00							
8	Deposit (7) Security Nat'l Bank	600.00		1,000.00					
8	Wichita Falls Clinic Hospital		4.00		1,015.16			187.48	1,202.64
11	Wichita Falls Building and Loan		250.00						
11	Point Breeze Club		15.00		750.16			187.48	937.64
11	Greever Wynne & Maer—Insurance on Ford Coupe		11.90						
11	Edna Bunnenburg		25.00		713.26			187.48	900.74
14	Deposit (9)	150.00							
14	Deposit (9)	208.62							
14	Deposit (9)	17.24		375.83					
14	Security Nat'l Bank		200.00						
14	James Bros.		160.00		729.09			187.48	916.57
15	Gulf Refining Company		8.30						
15	Elizabeth Bellenger		20.00						
15	Interest (Payment of interest on note #77754 of G. W. Peckham)		550.00						
15	Rest Cottage Association		5.00		145.79			187.48	333.27
18	E. C. De Montel and W. H. Sanford		5.00		140.79			187.48	328.27

4-27	Chas. E. Watson		$ 65.43						
27	Debit Advice—Rentals		4.38		—o—	$ 69.81		$ 409.88	$ 409.88
28	Texhoma		61.85		—o—	61.85		348.03	348.03
29	Hines Oil Co.		2.85		—o—	2.85		345.18	345.18
30	Mrs. T. T. Reese		50.00		—o—	50.00		295.18	295.18
5- 1	Elizabeth Bellinger		20.00		—o—	20.00		275.18	275.18
4	Renfro Drug Co.		5.25						
4	City Nat'l Bank—Rent on Deposit Box		10.00						
4	Wichita Club		5.95						
4	City Nat'l Bldg.—May Rent		65.00						
4	Keim Motor Co.		1.50		—o—	87.70		187.48	187.48
5	Deposit (9)	$100.00							
5	Deposit (9)	10.00		$ 110.00					
5	Perkins Timberlake		29.39						
5	Elizabeth Bellenger		20.00		$ 60.61			187.48	248.09
6	Phone Co.		21.60						
6	Automobile Storage Co.		18.60		20.41			187.48	207.89
7	Cato Tire Co.		1.25		19.16			187.48	206.64
8	Deposit (7)	400.00							
8	Deposit (7) Security Nat'l Bank	600.00		1,000.00					
8	Wichita Falls Clinic Hospital		4.00		1,015.16			187.48	1,202.64
11	Wichita Falls Building and Loan		250.00						
11	Point Breeze Club		15.00		750.16			187.48	937.64
11	Greever Wynne & Maer—Insurance on Ford Coupe		11.90						
11	Edna Bunnenburg		25.00		713.26			187.48	900.74
14	Deposit (9)	150.00							
14	Deposit (9)	208.62							
14	Deposit (9)	17.24		375.83					
14	Security Nat'l Bank		200.00						
14	James Bros.		160.00		729.09			187.48	916.57
15	Gulf Refining Company		8.30						
15	Elizabeth Bellenger		20.00						
15	Interest (Payment of interest on note #77754 of G. W. Peckham)		550.00						
15	Rest Cottage Association		5.00		145.79			187.48	333.27
18	E. C. De Montel and W. H. Sanford		5.00		140.79			187.48	328.27
20	Deposit—Trust check #503 payable to G. W. Peckham, Marlborough						$3,000.00		
20	Cash		300.00						
20	Marlborough Addition		2,000.00		—o—	2,159.21		1,028.27	1,028.27
22	Elizabeth Bellenger		20.00		—o—	20.00		1,008.27	1,008.27
24	C. E. Basham		100.00		—o—	100.00		908.27	908.27
25	Oil Review		10.00		—o—	10.00		898.27	898.27

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

Period of March 6, 1926, to July 23, 1926 (Cont'd).

			Personal Funds			Trust Funds—Marlborough			Commingled
	Detail	Checks	Deposits	Balance	Checks	Deposits	Balance	Balance
1926								
5-28	A. B. Maples, Agent	$ 624.40						
28	Security Mutual Aid Association	2.50		-o-	$ 626.90		$271.37	$ 271.37
29	Deposit (8) Trust check #505—Salary		$400.00					
29	Deposit		56.25					
29	Elizabeth Bellenger	20.00		$ 436.25			271.37	707.62
6- 1	McClurkan & Co.	189.90		246.35			271.37	517.72
2	Deposit (8 B) Trust check #507—City Nat'l Bank—Marlborough					$1,500.00		
2	City Nat'l Bldg.	65.00						
2	Marlborough Addition				1,500.00			
2	McClurkan & Co.	21.00		160.35			271.37	431.72
3	E. E. Scannell	79.09						
3	Keim Motor Co.	6.75						
3	Wichita Club	8.50						
3	Wichita Falls Building and Loan	40.00		25.81			271.37	297.18
4	Security Nat'l Bank	150.00						
4	City Tire Co.	3.25						
4	J. E. Duncan	2.50						
4	Cash	5.00						
4	P. B. M.	86.25						
4	Wichita Floral Co.	40.00		-o-	261.19		10.18	10.18
5	Deposit (8)		5,670.70					
5	Elizabeth Bellenger	20.00		5,650.70			10.18	5,660.88
7	L. I. Lucey	3.00						
7	Malborough Addition (split	$1,000.00)	989.82		4,657.88		10.18	-o-	4,657.88
8	Renfro Drug Co.	2.54						
8	Perkins Timberlake	33.81						
8	Point Breeze Boat Works	5.00						
8	Auto Storage Co.	15.30						
8	B. L. Fain	1,500.00						
8	Phone Co.	12.25		3,088.98			-o-	3,088.98
9	Munger Auto Co.	48.95						
9	Wichita Falls Clinic Hospital	16.00		3,024.03			-o-	3,024.03
10	Hines Oil Co.	21.91						
10	Collector of Internal Revenue	33.58						
10	Collector of Internal Revenue	33.58						
10	Cash	100.00		2,834.96			-o-	2,834.96
11	Deposit (8) H. H. Roberts		50.00					
11	H. H. Roberts—Plans on House	100.00		2,784.96			-o-	2,784.96
12	Deposit (7)	5,000.00						
12	Deposit (7)	5,000.00	10,000.00					
12	R. I. Fain	18.75						

		Detail	Personal Funds Checks	Personal Funds Deposits	Personal Funds Balance	Trust Funds—Marlborough Checks	Trust Funds—Marlborough Deposits	Trust Funds—Marlborough Balance	Commingled Balance
1926									
5-28	A. B. Maples, Agent		$ 624.40						
28	Security Mutual Aid Association		2.50		—o—	$ 626.90		$271.37	$ 271.37
29	Deposit (8) Trust check #505—Salary			$400.00					
29	Deposit			56.25					
29	Elizabeth Bellenger		20.00		$ 436.25			271.37	707.62
6- 1	McClurkan & Co.		189.90		246.35			271.37	517.72
2	Deposit (8 B) Trust check #507—City Nat'l Bank—Marlborough						$1,500.00		
2	City Nat'l Bldg.		65.00						
2	Marlborough Addition					1,500.00			
2	McClurkan & Co.		21.00		160.35			271.37	431.72
3	E. E. Scannell		79.09						
3	Keim Motor Co.		6.95						
3	Wichita Club		8.50						
3	Wichita Falls Building and Loan		40.00		25.81			271.37	297.18
4	Security Nat'l Bank		150.00						
4	City Tire Co.		3.25						
4	J. E. Duncan		2.50						
4	Cash		5.00						
4	P. B. M.		86.25						
4	Wichita Floral Co.		40.00		—o—	261.19		10.18	10.18
5	Deposit (8)			5,670.70					
5	Elizabeth Bellenger		20.00		5,650.70			10.18	5,660.88
7	L. I. Lucey		3.00						
7	Malborough Addition	(split $1,000.00)	989.82		4,657.88		10.18	—o—	4,657.88
8	Renfro Drug Co.		2.54						
8	Perkins Timberlake		33.81						
8	Point Breeze Boat Works		5.00						
8	Auto Storage Co.		15.30						
8	B. L. Fain		1,500.00						
8	Phone Co.		12.25		3,088.98			—o—	3,088.98
9	Munger Auto Co.		48.95						
9	Wichita Falls Clinic Hospital		16.00		3,024.03			—o—	3,024.03
10	Hines Oil Co.		21.91						
10	Collector of Internal Revenue		33.58						
10	Collector of Internal Revenue		33.58						
10	Cash		100.00		2,834.96			—o—	2,834.96
11	Deposit (8) H. H. Roberts			50.00					
11	H. H. Roberts—Plans on House		100.00		2,784.96			—o—	2,784.96
12	Deposit (7)	5,000.00							
12	Deposit (7)	5,000.00		10,000.00					
12	B. L. Fain		18.75						
12	Eldora Bunnenburg		25.00						

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

Period of March 6, 1926, to July 23, 1926 (Cont'd).

		Personal Funds			Trust Funds—Marlborough			Commingled
1926	Detail	Checks	Deposits	Balance	Checks	Deposits	Balance	Balance
6-12	Wichita Building and Loan	$ 250.00						
12	Elizabeth Bellenger	20.00		$12,471.21			-o-	$12,471.21
15	Continental State Bank—Rising Star	7,500.00						
15	Cash	1,000.00						
15	C. E. Rodgers—Rentals on Shackelford County Lease	20.75		3,950.46			-o-	3,950.46
16	Deposit (7) Trust check #510 payable to City Nat'l Bank—Marlborough					$4,500.00		
16	A. B. Maples, Agent	292.20						
16	E. E. Scannell	974.15		2,684.11			$4,500.00	7,184.11
17	E. C. De Montel & W. H. Sanford	5.00		2,679.11			4,500.00	7,179.11
18	C. I. Francis—Costs in Shamrock Oil Co. Case	101.50						
18	Cashion Check	100.00		2,477.61			4,500.00	6,977.61
19	Marlborough Addition				$4,500.00			
19	Elizabeth Bellenger	20.00		2,457.61			-o-	2,457.61
21	Security Nat'l Bank	190.00		2,267.61			-o-	2,267.61
22	American Legion	1.00		2,266.61			-o-	2,266.61
23	L. E. Whithand & Co.—First Installment Paving Lots 11-12-13 & 14 Block 44A Highland Addition	241.20		2,025.41			-o-	2,025.41
24	Gulf Refining Co.	9.40		2,016.01				2,016.01
26	Deposit (6)		$123.10					
26	Deposit (6)		500.00					
26	Deposit (6)		57.97					
26	Deposit (6)		1.50					
			$682.57					
26	Elizabeth Bellenger	25.00		2,673.58			-o-	2,673.58
28	E. E. Scannell	47.19						
28	H. C. Thurman	50.00		2,576.39			-o-	2,576.39
30	E. E. Scannell	821.97		1,754.42			-o-	1,754.42
7- 1	J. T. & E. M. Sommerville	24.72						
1	W. H. Peckham	29.40		1,700.30			-o-	1,700.30
2	Security Nat'l Bank	200.00						
2	Nunn Electric Co.	89.84		1,410.46			-o-	1,410.46
3	Rentro Drug Co.	5.89						
3	Auto Tire Co.	7.10						
3	City Nat'l Bldg.	65.00						
3	Perkins Timberlake Co.	18.16		1,314.31			-o-	1,314.31
6	Deposit (7) Trust check #512 payable to G. W. Peckham—Salary		400.00					
6	Deposit (7)		42.00					
			442.00					
6	Cash	10.00						
6	Ray-Featherstone Oil Co.—My part of rentals on 20 acres of Vernon Lease	5.00						

Analysis of G. W. Peckham's Commingled Account in the City National Bank, Wichita Falls, Texas.

Period of March 6, 1926, to July 23, 1926 (Cont'd).

1926		Detail	Personal Funds Checks	Personal Funds Deposits	Personal Funds Balance	Trust Funds—Marlborough Checks	Trust Funds—Marlborough Deposits	Trust Funds—Marlborough Balance	Commingled Balance
7- 6	Wichita Falls Golf and Country Club		$ 20.63						
6	Elizabeth Bellenger		25.00						
6	Wichita Club		19.25						
6	Western Union		2.54		$1,673.89			-o-	$1,673.89
7	Sharpe Bros.		101.30						
7	Hines Oil Co.		30.13						
7	Cash		1.50						
7	Noble—Little Hdw. Co.		9.00						
7	Phone Co.		14.20		1,517.76			-o-	1,517.76
8	Munger Auto Co.		33.75						
8	P. B. M. Co.		50.25						
8	Wichita Falls Clinic Hospital		12.00		1,421.76			-o-	1,421.76
9	Wichita Building and Loan		260.00						
9	Orient Petroleum Co.		3.15		1,158.61			-o-	1,158.61
10	Elizabeth Bellenger		25.00		1,133.61				1,133.61
12	Point Breeze Boat Works		5.00						
12	Eldora Bunnenburg		25.00		1,103.61			-o-	1,103.61
15	Deposit (7) Trust check #519 favor of City Nat'l Bank, Marlborough						$1,000.00		
15	Landon Hill Co.		10.00		1,093.61			$1,000.00	2,093.61
16	Cash		50.00		1,043.61			1,000.00	2,043.61
17	Elizabeth Bellenger		25.00		1,018.61			1,000.00	2,018.61
19	E. C. De Montel & Sanford (On McCullough lawsuit)		19.00						
19	Deposit—Return J. Moose Permit			$100.00	1,099.61			1,000.00	2,099.61
22	City Nat'l Bank		53.12		1,046.49			1,000.00	2,046.49
23	Deposit (7) 7424	$ 11.27							
23	Deposit (7)	138.00		149.27					
23	Texas Highway Association		15.00						
23	Malborough Addition					$1,000.00			
23	Cash		50.00		1,130.76			-o-	1,130.76

2013 Cross Examination.

By Mr. Humphrey:

I have been working on this matter between two and three weeks. I have had the twelve volumes of testimony which have been taken, I have had the records of the Wichita Royalty Company, photostatic copies of the bank statement, deposition of Mr. Deaton, tabulating all of Mr. Peckham's personal checks—that is all of the records I remember right now. I had also the work that Mr. Sheppard had done, and worked from those, after I verified them. I did a little work on this case a couple of years ago, made an analysis at that time. I made the statement which you now show me, attached to the brief of the Wichita Royalty Company, I don't recall the theory I used then, two years ago. I considered at that time that the amount of trust funds in Mr. Peckham's commingled or current account, at the time of which payment to the bank is determinable by charging his aggregate of personal deposits for the period shown to the trust fund deposit, and the bank payment with his aggregate withdrawals during such period, before charging the trust deposits with any of such withdrawals. I thought that theory was correct at the time I wrote it, it was my opinion. As to whether I used the correct theory on August 12, 1935, that involves a question of law, and I am unable to say. In this report that I have offered in evidence at this time, I use the principle of applying personal disbursements to the personal funds, as far as they would go and the balance to trust funds, and I think I used the same

2014 theory there two years ago, used the personal funds as far as they would go, I believe that is the principle I used in each report. In my judgment I used the same principle in both analysis. I used the method in this case to try to definitely trace trust funds and personal funds. I have taken the trust deposit and applied against it all trust withdrawals and taken the personal funds and charged against it all personal

withdrawals, with the definite idea in mind to dissimilate the two funds. I have not used the minimum balance rule, I have identified personal and trust all the way through. I think I understand what minimum balance rule is, as an accountant. I have not used the rule as laid down in the case of Maryland Casualty Company versus City National Bank, 29 F (2) 262; I have used the method of definitely identifying and carrying through both personal and trust items. In the items that are in question, I have, from the transactions beginning in 1923, and continuing up to the death of Mr. Peckham, to actually trace the trust funds that actually went to his account, and the application of them, and the personal funds that went to his account, and the application of them. I have done that with reference to the items in question, for each of those periods, and I call penetrations. Those were the items that were complained of in the cross action and the items which I was requested to look into. I was not requested to make a survey or a picture or a report of the entire case as to the City National Bank from the time Peckham became trustee, but just the specific item, my
2015 report does not undertake to show the entire transaction. I never made an entire audit of the affairs of the company, I only examined into the specific transaction. I would not undertake to testify that there was any actual shortage between George Peckham and the Royalty Company as a whole. If I were going to be able to make a stated account, from the first day to the last, it would be necessary to comprehend the whole picture. These transactions I have were picked out through the entire items, specific items, that my attention was called to. For instance, pages 1993 and 1994, covers only a period of a month and two days. The Grimshaw royalties covers only a short time, as does the Marlborough, I only investigated the period complained of, and the ones I was specifically asked to investigate. My report does not show the state of the account between Mr. Peckham and the City National

Bank or the Royalty Company and the City National Bank. I would not call my report an audit. This is a statement of facts as I have gathered them from the evidence on specific items on which I was requested to examine into.

I made the statement on pages 1936 and 1937, that banks and bankers frequently enquired into the purpose of a loan, or what is to be done with the proceeds. I made that statement to show the ultimate disposition of the loan. I did not see in the record any statement which Mr. Peckham made as to what he expected to do with the money, that is my statement, and I think there is evidence in the record that banks and bankers
2016 frequently inquire into the ultimate use of a loan, I don't know whether there was any inquiry as to these particular loans or not. The connection that had with me, was that they knew they were going to get some of this money back or they would not have made this loan—that is my conclusion or opinion that Mr. Harrell and Mr. Basham had an idea they were going to get some of this money back in payment of their account, so they could pay the bank what they were owing. I do not say that Mr. Harrell profited by this money that he loaned Mr. Peckham, I said they got some money back out of the proceeds of the loan—Harrell and Basham got some money back out of the proceeds of this $25,000.00 loan—I refer to the payment of Harrell and Basham in the Stephens Royalty that they sold George Peckham, they received on January 25, $10,028.00 from G. W. Peckham's commingled account, his personal account, in which he placed trust funds. The account was carried in the name of G. W. Peckham on the bank's records, without any indicia or evidence that anybody else had any money in it except Mr. Peckham—I call that a commingled account.

I wrote the biggest part of this report, and Mr. Scannell and Mr. Sheppard and Mr. Rogers all worked on it all the way around, Judge Rogers wrote part of it and I wrote part, and Mr. Scannell helped me with part of it,

I examined all of the report and checked all the references. I am a Certified Public Accountant. I wrote the following statement, "G. W. Peckham caused his trust books to show the Wichita Royalty Company's acquisition of half interest in the Marlborough Addition for a total consideration of $49,000.00. We all worked on it. I had not signed the report, but I will sign it, I am satisfied with all the facts. Defendant's Exhibit 186 is divided into periods, the first episode is January, February and March, 1926. The first statement is January 1, 1926, is that G. W. Peckham and J. T. Harrell were good friends, and I will say that the records so indicate. I don't suppose it would make any difference whether they were friends or enemies, as to the state of this account, but I don't think that unknown persons would have so much business with each other. In this statement I only picked out the facts as complained of in the cross action and as requested by Mr. Scannell and Mr. Rogers. This report is not for the purpose of stating any definite item as to what one might owe the other, I picked out specific items and examined into them. I think the records show that they were jointly interested in some New Mexico leases, Mr. Peckham issued Mr. Harrell a check on June 24, 1925. I don't recall whether there is any claim that Mr. Harrell or the City National Bank owe the Wichita Royalty Company anything for that transaction or not. I do not recall that the pleadings complained of anything Mr. Harrell owed the bank. The statement there that Mr. Harrell was indebted to the bank on January 1, 1926, in the sum of $7,500.00, is made for the purpose of showing that Mr. Harrell did receive some of this money over here, as per some of these schedules, and later paid that specific money on his debt to the bank. It is not my purpose by making that statement to create the inference that Mr. Harrell loaned Mr. Peckham $25,000.00 for the Wichita Royalty Company in order for Harrell to pay his debt to the bank, I do not say

2017

2018

that in this report. I did not undertake to determine whether the royalty company owed Peckham any money.

On page 1952, of Exhibit 186, is the following, "A mineral deed with the grantee's name in blank, dated 14th of October, 1925, was attached to a draft drawn on G. W. Peckham for $2,500.00 which G. W. Peckham paid by check dated October 17, 1925," we all worked on that statement, I think that is what Mr. Carsons says. I saw the photostatic copy of the Exhibits on it, anyway, that is my recollection of the record, but I will look it up further. I have seen the deed, and there is some testimony and one of these checks regarding it. If I have misquoted the record in that regard, I will correct it. I have charged George Peckham with this $2,500.00, and consequently the City National Bank with $2,500.00. I have included in a running statement the trust fund check which George Peckham passed—in his statement there is the amount which would show it was deposited to his credit in the City National Bank and subsequent statement shows the amount. When I said C. A. Rogers testified the property was condemned, that was my understanding from Mr. Rogers and Mr. Scannell. Mr. C. A. Rogers' testimony has not been written up—I mean Guy Rogers. I think that I show that of this $5,500.00 that George Peckham actually paid back into the treasury of the company, $1,-500.00, I did not examine property No. 82. I would not say that I would mean to infer from this statement that Property No. 81, Callahan Royalty was condemned at the time the Wichita Royalty Company paid for this royalty. As to that particular item with reference to the testimony of C. A. Rogers, that was made up from hearsay statements of Guy Rogers, the attorney for the Wichita Royalty Company, and Mr. Scannell, the trustee. I was informed, as stated in the report, "that the examiners notes not yet transcribed, show that Mr. Harrell testified that he and Mr. Basham took in the Curlee interest for $3,567.75, knowing that G. W. Peckham was making $1,000.00 profit in the trans-

2019

action, whereby J. T. Harrell and C. E. Basham sold this Stephens Royalty interest to Wichita Royalty Company," Mr. Scannell and Mr. Rogers told me that Mr. Harrell said that Mr. Peckham was making $1,000.00, and he knew it, or words to that effect. Any error I have made in the record, I will gladly correct, I have prepared this thing hurriedly and it is possible I have missed something. I have sat up many an hour running these references, and dug them up myself and then double checked them.

Defendant's Exhibit 186 is the one I prepared in collaboration with other parties. The Callahan property, Cross Plains royalty is page 1952. I never gave Mr. Peckham any credit for what he paid out of his personal funds for the purchase of that royalty. With
2020 reference to the mineral deed being filled out in blank, etc., the testimony I used is in the record, Q. and A., at pages .... and ...., that is my opinion and my conclusion, according to that testimony. I stated that as a fact, but it is my opinion and conclusion, that I drew. I don't know whether Mr. Carson had any actual knowledge as to the facts or not, he was an employee of the bank for years. I will say this, that in Mr. Carson's testimony he says that in his opinion the grantee's name was in blank when the deed came in—that is what I gather from his testimony, the question by Mr. Rogers is, "Mr. Cason, do you say you think that the Wichita Royalty Company's name is written at a place where there had theretofore been no erasures?" And his answer is, "That is my opinion." Further down he says, "It is not the same typewriter that was used to write the name Wichita Royalty Company in there, I don't think." He does not say anything about Mr. Peckham writing the name of the Wichita Royalty Company, a trust estate in there. That was my conclusion from the testimony, as indicated. That is the statement I used. I could not say myself when the name of the Wichita Royalty Company was written in that instrument, whether before George Peck-

ham paid the draft or after. When I said on page 1952 my report that was my conclusion, I said Peckham wrote it in there, and now I say I don't know anything about it. That was my conclusion at the time.

Through this instrument I gave my conclusion as to various of the properties. The first one I deal
2021 with is the Grimshaw, purchased during the early administration by George Peckham, February 12, 1923, is the conveyance to Peckham from Grimshaw. That royalty is repudiated. We have charged Peckham with what he transferred out of the trust funds for the Grimshaw royalty. I have not given Peckham credit for what the Grimshaw royalty cost Peckham when Peckham bought it, I charged it to him—the cost of the Grimshaw Royalty of $7,500.00. I have not allowed him any credit for it. Peckham had paid $7,500.00 for the Grimshaw Royalty and the Grimshaw paid Peckham $7,500.00 for it, and if the Grimshaw royalty company had not produced a barrel of oil, I would have Peckham owing the Wichita Royalty Company, $7,500.00 under my statement. The original escrow contract with reference to the Grimshaw Royalty is dated March 12, 1923, and the deed made soon thereafter, and the royalty company entered it upon their books as a royalty owned by them, and the royalty company, during the lifetime of the royalty, regarded it as their property and received their part of the oil runs, which was considerably more than the original cost, and has been agreed upon, is $8,591.70, $1,000.00 more than the original cost of the royalty. I charge Mr. Peckham with the cost, and credit him with the oil runs,—would Mr. Peckham be entitled to the cost to Peckham? I will say that I charged him with the purchase price and credited him with the oil runs. I did not give him credit for the cost.

The Luke Wilson property is dealt with on page 1943 my report I use this $12,000.00 check, No. 154,
2022 dated February 2, 1924, payable to B. L. Fain, it was deposited on February 22, 1924, in Mr.

Peckham's commingled account. The check is payable to B. L. Fain, to his order; my interpretation of the record is that it was transferred by trust check No. 154, and deposited in Peckham's account, as to any subsequent or interim transaction, I would not be in position to say, I have seen the check. The check is indorsed, both in the payee's name and Mr. Peckham's name, no I am wrong about that, Mr. Peckham's name, I say it was deposited to his account. I know the effect of an indorsement in blank creates an instrument payable to the bearer. That is what happened, this check was issued to B. L. Fain and B. L. Fain or E. E. Scannell, or someone for B. L. Fain, indorsed the check and the check was deposited after its indorsement to the credit of G. W. Peckham in his personal account, yet, I have treated this as if it came direct from the Wichita Royalty Company. The next item of $9,250.00 was the balance of the payment on the Wilson Royalty. In making my report against Peckham and the bank, I have charged Peckham with the oil payment, I charge him with what the royalty company transferred for that purpose.

As to the statement with reference to the White lands, on page 1947, of my report, with reference to those two checks, aggregating $21,000.00, I say in my statement, "On the same date those checks were cleared Peckham received credit upon his account for a like amount." I will say this, the $10,000.00 check No. 246, Plaintiff's Exhibit 161, shows that the date of issuance, July 24, 1924, payable to the order of Security National Bank, paid through the Security National Bank on July 26. On July 25, there was a deposit of $10,000.00 to G. W. Peckham's account, and on July 26, $10,000.00 was charged to the Wichita Royalty Company's account. It was cleared the day after the deposit of $15,000.00 was made in the Wichita Royalty Company's account. Instead of being the same day in my report, it should have been the next day. These two checks, $10,000.00 and $11,000.00 were made payable to the order of Security National Bank.

2023

It is my understanding after reading the record, that these two identical items were deposited in the Security National Bank, that is the original check, I don't know how it got over here in the City National Bank, if that represents the same fund, I believe Mr. Carson testified it was evidently the same money.

I do not have any interest in this lawsuit, I am only telling you what is my understanding of Mr. Carson's testimony. That money could have gotten over here in this bank in several ways, I would not attempt to say, whether by cashier's check or by cash or by check on the Security National Bank—I haven't had any Security National Bank records.

I say on page 1949 of my report that the books of F. O. Harrell show $698.65 received from Peckham—I saw the books of F. O. Harrell, in my ofifce. I do not have those books now, that was about a week ago, Mr. Scannell got them for me, I don't know where he
2024 got them, I turned them back to Mr. Scannell. I was working up this report. I do not know whether any person connected with the City National Bank had access to these books or not. I do not know whether they were F. O. Harrell's trustee books or his individual books.

The next is the Routan Royalty, I did not try to trace the cost of this to Mr. Peckham. I have given Mr. Peckham no credit for the cost of this royalty to him.

The next item, the Porter Ranch, I make a statement that Peckham, trustee, after paying $1,250.00 on his part of the cash consideration, took $1,250.00 from the Royalty Company. I further say that the property was foreclosed, I got that information from the records.

The Hartley County property No. 94, I charged that item against the bank, $1,920.00; that item was taking up the draft that was made payable to the City National Bank—I don't think the $1,920.00 was deposited. Mr. Peckham took up the draft, it was not deposited into his bank account. On page 1958, I make a state-

ment that $220.00 of $301.82 was transferred, that the bank received that money, I do not think that is an incorrect statement. I show in my report that the balance to the account of Mr. Peckham on March 16, 1927, was $1,274.42, and shows that Peckham deposited from his personal funds, $582.00, that will aggregate $1,856.42; then he gave a check for $1,500.00, subtracted from his personal account, paid on the note, that would leave in his personal account, $356.42. I do
2025 not know the genuine indorsement of B. L. Fain. These checks that I referred to on page 1676 my report, with reference to Defendant's Exhibit 186, that none of the above checks, referring to certain checks, except 598, bear the genuine indorsement of B. L. Fain, I followed the testimony as to that statement. I also read the pleadings in the case, and used both the pleadings and the testimony in making up my report, and used the pleadings if they were backed up by the testimony. In the beginning of my report, I used the words, "Substantially of the cross complainant's re-casted cross complaint and interpleader, filed December 2, 1936," "On January 1, 1926, G. W. Peckham and J. T. Harrell were associates and good friends." The pleadings say, "The former trustee of the Wichita Royalty and the latter was the chief executive officer of the plaintiff bank," and I say, "Mr. Peckham was trustee of the Wichita Royalty Company and Mr. Harrell was an executive officer of the plaintiff bank." The pleadings say, "These men were partners in a large suburban venture and joint owners of land known as the Curlee tract," and I say in my report, "They were business associates, these men were partners in a large suburban venture known as the Marlborough Addition, they were then negotiating with W. S. Curlee for their joint venture of the Curlee tract." On page 1656 of my report, I say, "The effect of the above, as indicated by the records, is that Mr. Harrell, as an individual, had acquired and sold a valuable property." Judge Rogers says in the pleadings, paragraph 32, "The

2026 effect of the above is this: J. T. Harrell as an individual sold a valuable property." That is substantially the same language. And I also say, "As an executive officer of the plaintiff bank, he loaned the money with which it was bought," and Judge Rogers says in his pleadings, "As a banker, he had loaned G. W. Peckham the money with which it was bought, the loan being made upon the credit of Wichita Royalty Company, to the company to which the deed ran," and I say, "This loan was negotiated to the credit of the Wichita Royalty Company and title was conveyed by Messrs. Harrell and Basham to the trust. It is substantially the same language. And again, "Mr. Peckham as an individual, disposed of his personal interest in the Curlee land for a $1,000.00 profit; Mr. Peckham paid Mr. Harrell from transferred funds, such an amount as to enable Mr. Harrell to pay the plaintiff bank upon his own indebtedness to the bank in the sum of $5,006.67." And Judge Rogers said, "G. W. Peckham, as an individual disposed of his interest in the Curlee land for $2,417.00." My report and the pleadings run along the same lines, and the testimony bears them out. Defendant's Exhibit 186 is an examination or report, into certain items that I have taken and backed up by evidence.

In Defendant's Exhibit 187, I undertake to account for all the funds that were transferred by G. W. Peckham, or from the Royalty Company and deposited on checks of the Royalty Company to the individual account of G. W. Peckham in the City National Bank.

2027 I don't know whether I left any of them out or not, I have analyzed certain so-called penetrations. My meaning there is that out of trust funds certain items were paid to the bank on Mr. Peckham's personal indebtedness. The first item I detail is $390.00, the analysis beginning on the 11th of May, 1923, and ending June 22, 1923, from that analysis I claim $390.80 was used on the payment of a check of $3000.00 principal and $50.60 interest on 6-22-23. The minimum balance between the 5th and 11th, 1923, and the 6-22, 1923, was

$428.85. On June 15, 1923. The individual ledger sheet of G. W. Peckham in the City National Bank in June, 1923, shows the minimum balance was $905.05 on June 13, 1923. I do not show the minimum balance in my report that day, I show the total balance at the end of the day, also the personal funds and the trust funds. I show a minimum balance of trust funds on that day, $1,513.30; if his minimum balance was $905.50, as shown by the bank's books, it would necessarily decrease the trust funds between $1,513.50 and $905.50, the difference between those two items, it is stated on the basis of total business transactions, and not the interim transactions during the day. The difference between those amounts is $607.45. A decrease in trust funds for the bank's books and records. This penetration of $390.00 occurred on June 22. The difference between the trust fund which I show as trust fund, from the minimum balance rule on the books would amount to a decrease in trust funds of $607.45, and I follow my minimum balance right on through to the date of payment, which brings the balance lower, the transfer I claim
2028 was a transfer of trust funds, May 11, 1923, check which went for the Grimshaw royalty. If that item was applied, in my computation, to the Grimshaw royalty, there would be no penetration, but this royalty is repudiated and we considered that as a transfer of trust funds. I mean Wichita Royalty Company. When I say we, I mean Mr. Scannell, Judge Rogers, Mr. Sheppard and myself. I have no interest in the Wichita Royalty Company. My books and my analysis do show the minimum balance on June 13, 1923. I prepared this report on the basis of the entire transaction, and my report shows the beginning or closing, showing the beginning balance for the day and the closing balance for the day of all the transactions considered together. There are two balances which appear on the statement of G. W. Peckham. The beginning balance on June 13, as per the bank ledger, was $2,441.38. subsequent transactions reduced this balance to $905.05; the closing balance

was $5,208.85 which involved several transactions and findings. I have used the entire amount. I would not say that my report shows the smallest balance on June 13, 1923, the minimum balance and the smallest balance are the same. My books show a balance of trust funds of over $1,500.00 on that day. The bank records show a minimum balance of $905.05 on that day, a difference of something like $600.00. The penetration on that day is $390.86.

The next item is $279.00, evidenced by payment of interest on a note that had been charged off by the City National Bank to G. W. Peckham 10-16-23; my
2029 statement relates to a so-called deposit of trust funds on 10-16-23, of $500.00, which was a salary check, payable to the order of G. W. Peckham, deposited in the City National Bank, and I treated that salary as a wrongful transfer in determining this $279.50 penetration. If it had not been for that salary check deposited on that day, there would have been no application of trust funds.

The next item on page 1710 my report, treated as a transfer or deposit of trust funds in order to obtain a penetration of $67.67, being interest payment on a note owed by G. W. Peckham—a transfer or deposit by Peckham of the $12,000.00 check—which was payable to the order of B. L. Fain and indorsed by B. L. Fain, or someone under his authority. If I had not treated that $12,000.00 check issued to B. L. Fain as a deposit of trust funds from the Wichita Royalty Company, there would have been no penetration on that day.

On page 1711, I show a payment of a note of $10,026.00 in effecting a use of trust funds of $5,500.00. That was a note of W. H. Peckham. If I had not charged that payment to the note of W. H. Peckham, there would have been no penetration on that check there would have been no use of trust funds, in respect to that item. On the same page, 1711, I have $9,250.00, I show that to be a transfer of trust funds. I know on the same day that Peckham paid out $80,000.00 for that royalty by

check for the L. F. Wilson royalty. I did not make any application of that $9,250.00, purchase of the
2030 Wilson Royalty, to an application of the $80,000.00 check that Peckham had issued on his personal funds to L. F. Wilson for the price of this royalty.

The next application of trust funds, is an item of $1,386.92 that I claim was used out of the royalty company money to pay a note, principal of $4,000.00 and interest of $56.00, on May 12, 1925; the alleged transfer that I claim was made on the 5th of May, 1925, was $2,500.00, that went to pay for the Routan royalty. That item is repudiated, so we call it a transfer of funds. If you treat that one day's transaction as a unit, Peckham deposited personal funds on that day of $4,183.00, and paid the bank $4,056.00 on the same day, also several other checks went to various parties. There were two checks to the collector of Internal Revenue in the amount of $509.89, and $474.91, and, Security National Bank, $2^0.00, and James Holcomb, $329.12, I presume the checks to the collector of Internal Revenue were for income taxes.

The next item, on page 1714, $400.00, salary on June 2, 1925, and I treat that as an item of wrongful transfer in an effort to show that the bank got $66.67 on the payment of interest on the 11th of June of that year. My report shows that on that very day Mr. Peckham had a balance of $202.54 personal funds, it also shows that on the same day there was two checks issued for $5.00 each and one for $500.00. The books of the bank indicate the sequence of those checks the same as I show on my report, I considered the entire day's transactions.

The next item, as to the use of funds, of
2031 Wichita Royalty Company, to pay City National Bank, was $10.00, which was rent on a deposit box. In order to make that, I considered a deposit of $400.00 on April 3, evidenced by salary check of G. W. Peckham as an improper deposit in his account.

The next item is an item of $500.00, payment on interest on note No. 81,324, G. W. Peckham, on August 10, 1926, that arises by virtue of the transfer that I claim was made on August 2, 1926, of $4,000.00; the voucher on that check shows it was for the purpose of paying the Highland Irrigation Company note, due 9-19-26. The four checks that you call off to me now, No. 532 for $4,357.58, No. 556 for $700.00, No. 538, for $538.16, all Wichita Royalty Company checks, including the $400.00 check, aggregates $9,595.74. I don't recall whether Mr. Peckham used those items for the purpose of paying Highland Irrigation Company matters or not, out of his own personal funds of $5,594.74. The $4,-000.00 check, No. 525 was deposited in Mr. Peckham's personal account, I don't recall whether the other three checks you mentioned were or not. This Marlborough was repudiated and such transfers were considered a transfer of trust funds for these repudiations. No credit was given to Peckham for any payment that he made in the improvement of it, from his personal account, the entire property was repudiated and these items deposited in his account are considered for these computations, a transfer of trust funds. The minimum balance in G. W. Peckham's account on September 2, 1926 was $128.51.

2032

Mr. Lambert and I reached the same agreement on item 9, page ...., Exhibit 187.

Page ..., Defendant's Exhibit 187, the next payment [redacted] the note of G. W. Peckham, 3-16-27, the beginning balance in George Peckham's personal account on that date was $1,274.42, he made a deposit on March 16 of $582.00, considered in personal funds, which would be a total of $1,856.42. The first check charged to the bank account on that day is $1,500.00, payable on notes No. 81,175, G. W. Peckham. Subtracting $1,500.00 from his balance, leaves a personal balance of $356.42. The next check was $577.00, to Texas Electric Service Company. The next item was $10.00 on page ...., Defendant's Exhibit 187, is where George Peckham paid $10.00 rental

on a safety deposit box in the City National Bank, and I claim that was use of trust funds in making that payment, Deposit of check for $500.00, issued to the order of B. L. Fain. The records will substantiate that the payee's name was indorsed by G. W. Peckham. On page ..., of the same exhibit a payment of $525.00 on note 36, of Wichita Royalty Company, that payment was made on the note of the Wichita Royalty Company and not Mr. Peckham. I also show another payment on note of $520.00, the same day, being 194, of G. W. Peckham's. The next item on page ..., I charge payment of $513.33 on note and interest, due by G. W. Peckham to City National Bank. In considering that a payment of trust funds, I have treated the $6,000.00 deposit made upon a cashier's check issued by Wichita State Bank and Trust Company, payable to W. C. Duncan and indorsed "Pay to the order of G. W. Peckham for Bristow Royalties, W. C. Duncan," as a deposit of trust funds. There was nothing to show it belonged to the Wichita Royalty Company, it is a cashier's check payable to W. C. Duncan, and indorsed by him. On page ..., I arrive at an application of trust funds to the payment of Peckham's individual debt, by treating a salary check issued by Wichita Royalty Company as an improper transfer, salary check dated 9-10-28, and shows that it was for Peckham's salary for preceding month. On page ..., I again use a deposit of a salary check for the same purpose.

2033

On the first page of my report, I have an item of $234.00 which was not the Wichita Royalty Company check. I have a check of $302.00, which was not the Wichita Royalty Company's check; those checks were checks of G. W. Peckham whereby he paid over to Wichita Royalty Company oil runs on Grimshaw. Those amounts did not come from the Wichita Royalty Company, they were from G. W. Peckham's account. For instance, I have a check here, No. 154, of $12,000.00, payable to B. L. Fain, I have included in this list. A check of G. W. Peckham for $184.00 on the second page; $141.00 on

the second page, also $525.00, $275.00, $480.00, $206.00, $182.00, $538.00, $138.00, $74.00, on the second page, and on the third page, $135.00, $5.00, $35.00, $40.00, $34.00, $751.00, $52.00, $54.00, $45.00, $47.00, and many other similar items that never did come from the ac-
2034 count of the Wichita Royalty Company into Peckham's account, they went from Peckham's account into the Wichita Royalty Company account, I charged against Peckham and gave corresponding credit for each amount. I charged these checks against the City National Bank and also gave corresponding credits to which they were entitled, therefore there would be no difference.

As to the items that did not find their way into the royalty company's account, for the sale of the Wilson Royalty and Hattie Vaughan Royalty that went directly into Peckham's account, $6,000.00, cashier's checks, to W. C. Duncan, I think that was deposited to Mr. Peckham's account. I have also included in this statement of salary checks, pages ... to ..., Defendant's Exhibit 187, the salary checks that were issued and paid to G. W. Peckham from the beginning of his term of office or shortly after he begun working until the time of his death, which were deposited into his account.

2035 Mr. Morrow:

Regarding what is known as the Routon Royalty, upon which the Wichita Royalty Company issued its check No. 373, dated May 5, 1925, in the sum of $2,500.00, the following appears—from the escrow files of the City National Bank of Olney, Texas, there is found an original letter, written by J. B. Routon to said bank, dated May 1, 1925, showing that there was then being deposited in said bank, a deed for one-fourth of the minerals in the one hundred and seventeen acre tract of land out of the Isaac Holman League and Labor in Archer County, Texas, which deed is dated May 1, 1925, together with a check of $10,000.00 drawn by G. W. Peckham in favor of the City National Bank of Olney on the City National Bank of Wichita Falls, showing that said papers were to re-

main pending abstract of title examination, for which fifteen days was given. The original deed so deposited is now found among the files of George B. Ray and J. H. Massie, dated May 1, 1925, recites $10,000.00 paid. $10.00 revenue stamps canceled and conveys said 1/4 interest to the said Ray and Massie. There was also found among the checks of G. W. Peckham a check dated May 1, 1925, drawn in favor of the City National Bank of Olney, Texas, for $10,000.00, and marked escrow, which was cashed on May 4, 1925.

2036

Mrs. Joella Terrett Butler, secretary for Dr. J. H. Massie states that actually Ray and Massie did not pay $10.000.00, but paid $5,000.00, as evidenced by their check of May 5, 1925, drawn in favor of G. W. Peckham on the Security National Bank of Wichita Falls, marked "Routon Royalty" and indorsed by G. W. Peckham and paid on May 5, 1925, and deposited by G. W. Peckham to his personal account in the City National Bank of Wichita Falls, along with other checks on May 5, 1925, the total deposit being $17,500.00. In that deposit were two other checks of $2,500.00 each.

Mrs. Butler further states that Ray and Massie never intended to buy more than a half interest in the property which would be 1/8 of the minerals.

The deed from Routon and wife to Ray and Massie was filed for record on the 22nd day of May, 1925, and Ray and Massie in turn executed two royalty payments conveying a 1/16 interest in the minerals in the same land, each dated June 30, 1925, one in favor of Wichita Royalty Company and one in favor of R. R. Robertson, both of which have been filed for record in Archer County, Texas, the Wichita Royalty Company conveyance being filed on the 5th day of December, 1925, and the Robertson conveyance on April 3, 1926. On the Robertson conveyance there was $2.50 revenue stamps.

2037

Mr. R. R. Robertson and his bookkeeper, Mr. Jimmie Terrell, state that while this was taken in the name of R. R. Robertson it belonged to Muse and Robertson, and that

the Muse and Robertson checks have been lost, or may be found at the Courthouse where there was some kind of a partnership accounting. However, they state that the journal of Muse and Robertson shows as an entry the fact that $2,500.00 was paid for this 1/16 mineral interest.

All parties waive the production of the witnesses, and agree that this statement may be used in lieu of bringing the witnesses here.

Mr. Rogers:
That is all right.

Mr. Boone:
Let the record show that the Defendants, City National Bank offered in evidence a statement showing the following facts:

(Said statement marked "Defendant's Exhibit 188" as follows:)

DEFENDANT'S EXHIBIT 188.

In order to show the volume of business handled by the Tellers of the City National Bank during the period inquired about herein, we have at random picked out a few days in each of the years 1923, 1924, 1925, 1926, 1927 and 1928, which show the following number of deposits, together with the number of respective items
2038 shown making up these deposits: These transactions do not take into consideration the respective checks that the Tellers handled and cashed at the counter, nor making change for respective customers:

	Number of Deposits	Total No. of Items on the Deposits
4-24-23	1156	7206
5-11-23	541	3202
2- 2-24	707	4108

	Number of Deposits	Total No. of Items on the Deposits
9-21-24	953	5149
11-10-24	1087	5188
3- 3-25	1770	9942
7-20-25	1180	5646
10- 8-25	646	4889
1-11-26	1175	6982
1- 4-26	1205	8061
1-18-26	1091	7847
2-23-26	1352	10142
3- 6-26	850	4300
12-22-26	685	6515
1-19-27	758	5034
2-19-27	933	4407
9-16-27	815	4816
10-14-27	624	5310
2- 6-28	1137	13680
2-24-28	716	9291
4- 4-28	670	11554
4-20-28	891	10649
9-27-28	583	4367

Mr. Boone:

It is further agreed that during the years 1923, 1924 and 1925, the number of receiving and paying tellers in the City National Bank during that period, was six. That from and after January 1, 1926, including 1928, the receiving and paying tellers of the City National Bank were seven in number.

The City National Bank further says that in connection with this fact, that the total deposits of the City National Bank of Wichita Falls, as shown on the dates beginning December 29, 1922, and ending December 31, 1929, are as reflected by the exhibit as follows:

(Marked "Defendant's Exhibit 189" as follows:)

2040 DEFENDANT'S EXHIBIT 189.

Total Deposits,

City National Bank.

Date	Amount
12-29-22	$ 8,227,630.28
4-3-23	7,722,280.97
6-30-23	6,842,685.89
12-31-23	7,659,346.62
3-31-24	7,042,032.87
6-30-24	6,816,485.06
10-10-24	6,693,161.23
12-31-24	10,876,374.17
4-6-25	10,327,305.29
6-30-25	10,633,900.94
9-28-25	10,014,284.31
12-31-25	10,891,528.81
4-12-26	10,962,329.02
6-30-26	10,683,926.48
12-31-26	10,406,186.27
4-23-27	10,546,974.09
6-30-27	9,287,565.80
10-10-27	9,453,931.98
12-31-27	10,267,068.42
2-28-28	9,983,004.84
6-30-28	10,162,557.57
10-3-28	9,118,601.78
12-31-28	9,968,532.10
3-27-29	9,701,171.33
6-29-29	8,063,700.09
10-4-29	7,006,104.65
12-31-29	8,674,374.87

2041 Mr. Humphrey:

It is agreed that the directors of the City National Bank in Wichita Falls, at the time of its organization, were Frank Kell, J. T. Harrell, Oral Jones, L. H. Cullum, Joe Kell, F. T. Timberlake, C. W. Snider, J. J. Perkins, and, Leslie Humphrey.

2042 J. T. HARRELL, recalled for further cross examination by Mr. Rogers, testified as follows:

I understand that these checks of the Wichita Royalty Company are what is known as voucher checks, there is a perforation at the top.

We begun to develop the Marlborough Addition about March 26, I neglected to get the date of the filing of the plat and the dedication.

In the trial of this case in the State Court, the question asked me by Mr. Humphrey, was if it were material to me whether the account was carried in the name of the Wichita Royalty Company or G. W. Peckham, the question was, "Was it all alike to you?" and I answered, "Yes, sir."

I do not know anything about the facts set out in the letter you now hand me.

Mr. Rogers:

We offer this certificate in evidence.

DEFENDANT'S EXHIBIT 196.

Department of State

State of Texas

Austin, Texas.

(Seal of State)

Edward Clark, Secretary of State.

2043 February 20, 1937.

Kilgore & Rogers,
First National Bank Building,
Wichita Falls, Texas.

Gentlemen:

This will acknowledge receipt of your letter of the 16th instant.

You are advised that the Texas Investment Company, Wichita Falls, Texas was granted a domestic charter August 30, 1929. It's right to do business as a corporation was forfeited July 2, 1933 for failure to pay franchise taxes.

We assure you it is a pleasure to be of service to you at all times.

Yours very truly,
EDWARD CLARK,
Secretary of State.
(Signed) M. E. SANDLIN,
Assistant Secretary of State.

The Witness:

The reference, to Mr. Deaton, termed by me perhaps as the deficiency note of the old bank, is the difference between the acceptable assets and the amount of deposit liability; the liability ledger account that is in evidence reflects the same transaction. There has been no pay-

ment by the old bank to the new bank, other than those reflected in the liability ledger.

As to the sale of the Stephens Royalty and reporting the income for 1925, whatever the record shows is correct.

Mr. Boone:

He reported the first sale on income tax, but I will make this statement, the first sale of the income tax, part of the purchase price, to-wit $5,005.00 of the
2044 original purchase price was not paid until February, 1926, but the report shows as of 1925.

The Witness:

I have testified to various transactions, by the directors of the old bank, occurring with the view to lending credit and support to the old bank. The obligations underwritten by the directors in most instances, had assets of the bank pledged as collateral, and was then underwritten by the directors, some of its obligations were not re-discounted by the other bank, in our over-extended position. It was first an obligation of the old bank. We did not expect the directors to pay if the bank had sufficient assets to pay its obligations, it was simply an underwriting of the obligations in order to furnish the necessary credits, and continue the bank as a going concern. They would be in the position of a surety if the obligations of the bank were not paid, and any loss that might be sustained they expected ratably to be distributed among those that were liable upon their double liability as stockholders of the bank, that would be the result of the final settlement.

The repurchase agreement, that was a definite obligation, these gentlemen were not in the business of purchasing notes, it was primarily an obligation of the bank—that it is not a fact, I stated it was primarily an obligation of the bank. I want to state the facts. The repurchase agreement did not carry the obligation of the bank on the repurchase agreement. On the bills payable it did, of

course, but under the repurchase agreement the
2045 items were sold without recourse on the bank and the contract was entered into by the directors to repurchase them if they became in default.

When I stated in the record that it looked "like they were going to call for us to liquidate the bank," I mean the public, the stockholders, the depositors, it would appear that the depositors were going to call for the entire liquidation of the bank, by virtue of the continuous withdrawals of funds, which I termed a dry run. The banking department was offering us every encouragement. Naturally if the withdrawal had continued it would mean an ultimate liquidation.

I expect on behalf of myself and the bank, when this litigation is finally terminated, to pay my counsel a reasonable compensation, I will satisfy my counsel.

Mr. Peckham, during his lifetime, so far as I know, contributed his part from time to time to the Marlborough Addition.

Re-Direct Examination.

By Mr. Humphrey:

I did not handle the matter of paying the franchise tax on the Texas Investment Company, Mr. Deaton handled that.

Re-Cross Examination.

By Mr. Rogers:

There were perhaps in excess of eleven thousand items handled or cleared through our bank during one day, as
shown by this record, at the different tellers'
2046 windows, and desks of the officers. During the day those checks would all be sorted and stacked and placed in initials, in stacks. I am not able to testify as to the routine of the workings of the bank, I had very little to do with the clerical end.

Re-Direct Examination.

By Mr. Boone:

From the inception of the Marlborough Addition, to the time of George Peckham's death, I did not have anything to do with the keeping of the books and records and details of the handling of that transaction, that was under the supervision of Mr. Peckham I don't know who actually kept the records. I just put up the money that they asked me to put up and had nothing to do with the details. I did not investigate the record to find out anything about it.

E. A. DEATON, recalled for further direct examination by Mr. Humphrey, testified as follows:

I looked after the payment of the franchise tax of the Texas Investment Company, that tax became delinquent to the secretary of state at one time, in 1934. I paid the franchise taxes that were delinquent in November, 1935. I have the check, and sent it by remittance letter to the Secretary of State—I think we had a statement, I
2047 don't think a letter accompanied those checks, however, I have a letter here tracing that remittance, letter dated November 19, 1935, stating that "on November 2, we forwarded to you franchise tax," that is what happenend, the report accompanied those checks and the original remittance for the years 1932, 1933. and 1934, together with cashier's check in the amount of $257.40. We said in the letter that we had no knowledge of this remittance and would appreciate sending a receipt for the taxes as soon as possible. I sent that letter prior to the time I sent the check of November 4. I received a letter from the Secretary of State, acknowledging receipt of the letter November 22, 1935, and this is the letter I received, acknowledging the receipt of the check of $257.49. Here is a check of $1.95, November 26, 1935, that made the total amount. There is no tax accrued since

that payment, that is the total payment. We received a letter dated December 10, and on the 12th of December, 1935, from the secretary of state, this is the letter you now show me. This is the tax receipt from the secretary of state, showing the payment of franchise taxes for 1935 and 1936, and these are the receipts. I also received these receipts dated January 29, 1935, and 1936. The franchise tax is payable May 1, of each year, for the year ending April 30.

2048 Mr. Humphrey:

I offer in evidence two cashier's checks, one dated November 4, 1935, payable to the Secretary of State for $257.40, bearing the indorsement of the Secretary of State.

Another check of $1.95, dated November 19, 1935, payable to the Secretary of State.

Also Franchise tax receipts showing the receipt of all corporation taxes for the year ending April 30, 1936.

Also letter from the Secretary of State dated November 22, 1935, showing the status of the account and the amount of taxes delinquent.

Also a letter from the Secretary of State, dated December 10, 1935, showing that the corporation's right to do business has been revived as of December 2.

All of said instruments marked "Plaintiff's Exhibit 222" and reading as follows:

2049 PLAINTIFF'S EXHIBIT 222.

(Check) Wichita Falls, Texas Nov. 4, 1935 A 79503 51369 (in ink) J. B. Mintor, Exchange Teller City National Bank in Wichita Falls Pay to the order of Secretary of

State of Texas $257.40 $257 & 40 cts (No Pro) (88-17) 88-130 11 (Cashier's Check) (Signed) H. S. Davis, Ass't Cashier for Cashier (On back thereof) Pay to the Order of Treasurer State of Texas R. B. Stanford Secretary of State (Stamped) 32-3 Pay to the Order of any Bank, or Banker all Prior Indorsements Guarantee Nov. 8, 1935 Federal Reserve Bank 32-3 of Dallas 32-3 8 (Perforated) Paid 11-19-35 88-130 (Stamped) Austin National Bank pay to the order of any bank, banker or trust Co. Nov. 7, 1935 All Prior Indorsements Guaranteed 88-17 Austin, Texas.

(Stamped) For Collection -o- Nov. 7, Charley Lockhart State Treasurer of Texas.

(Check) 52191 Wichita Falls, Texas Nov. 26, 1935 A 80317 Pay to the order of Secretary of State of Texas $1.95 $1 & 95 cts 88-130 11 Cashier's Check (Signed) J. B. Mintor Ass't Cashier for Cashier (On the back thereof) Pay to the Order of Treasurer of State of Texas R. B. Stanford Secretary of State. (Perforated) Paid 12-1035 88-130 (Stamped) 32-3 Pay to the order of Any Bank or Banker, All prior indorsements guaranteed Dec. 2050 9, 1935 Federal Reserve Bank of Dallas (Stamped) Austin National Bank Pay to the order of any bank, banker or trust Co. Dec. 6, 1935—88-17 Austin, Texas.

(Stamped) For Collection -o- Dec. 5, 1935 State Treasurer of Texas.

(Card) Addressed to Texas Investment Co. of Wichita Falls, City National Bank, Wichita Falls, Texas (Stamped) Austin, Texas Jan 30, 11 AM 1936 Capitol Sta. (on reverse side) State of Texas Franchise Tax Receipt Amount $85.80 Date Jan. 29, 1936.

The Secretary of State hereby acknowledges receipt from the corporation named below, of Franchise Tax(es).

and/or penalties in the amount sh n above, due the State of Texas for the year(s) ending April 30, 1936. Acceptance of this amount does not preclude the assessment of additional taxes and penalties according to the laws of this State. In testimony whereof, witness my official seal of office on the date above written. Name and address of Corporation: Texas Investment Co. of W. F. Account Number 19720. (Seal) Jan 31, 1935 (Signed B. R. Stanford, Secretary of State.

(Card) Addressed to Texas Investment Co. of Wichita Falls, City National Bank, Wichita Falls, Texas. (Stamped) Austin, Texas Jan 30 11 AM 1936 Capitol Sta. (On reverse side thereof) State of Texas Franchise Tax Receipt Amount $62.40 Date Jan. 29, 1935.

2051 The Secretary of State hereby acknowledges receipt from the corporation named below, of Franchise Tax(es), and/or penalties in the amount shown above, due the State of Texas for the year(s) ending April 30, 1936. Acceptance of this amount does not preclude the assessment of additional taxes and penalties according to the laws of this State. In testimony whereof, witness my official signature and seal of office on the date above written. Name and Address of Corporation Texas Investment Co. of W. F. Account Number 19720 (Seal) Jan. 31, 1935 (Signed) R. B. Stanford Secretary of State.

(Card) Addressed to Texas Investment Co. of Wichita Falls, City National Bank, Wichita Falls, Texas. (On reverse side thereof) State of Texas Franchise Tax Receipt Amount $109.20 Date Jan. 29, 1936.

The Secretary of State hereby acknowledges receipt from the corporation named below, of Franchise Tax(es), and/or penalties in the amount shown above, due the State of Texas for the year(s) ending April 30, 1936. Acceptance of this amount does not preclude the assessment of additional taxes and penalties according to the laws of

this State. In testimony whereof, witness my official signature and seal of office on the date above written. Name and Address of Corporation Texas Investment Co. of W. F. Account Number 19720. (Seal) Jan. 31, 1935 (Signed) R. B. Stanford Secretary of State.

2052 —(Letter).

Department of State,

State of Texas.

(Seal of State) Austin, Texas.

R. B. Stanford,
Secretary of State.
Texas Investment Company,
P. O. Drawer 60,
Wichita Falls, Texas.

November 22, 1935.

Account: 19.720.

Gentlemen:

We acknowledge receipt of your communication of November nineteenth relative to the filing of your franchise tax reports and the payment of your franchise taxes.

Our records show that we received your reports on or before November fourth, together with remittance in the amount of $257.40. However, we computed the correct amount due to be as follows:

Tax for 1934	$ 39.00
10% penalty	3.90
25% penalty	9.75
Tax for 1935	39.00
10% penalty	3.90
25% penalty	9.75

Tax for 1936	39.00
10% penalty	3.90
25% penalty	9.75
Revival fee	101.40
Total amount	$259.35

2053 Upon receipt of your reports and remittance we mailed you a post-card stating that there was a balance yet due of $1.95.

We regret that you failed to receive this card, but immediately upon receipt of your remittance in this amount we shall place your corporation in good standing to April 30, 1936.

We trust this information to be sufficient, and wish to assure you that it is our desire to cooperate at all times.

Very truly yours,
R. B. STANFORD,
Secretary of State.
By W. C. CASON.
WCC-s Franchise Tax Department (s)

(Letter).

Department of State,

State of Texas.

(Seal of State) Austin, Texas.

R. B. Stanford,
Secretary of State.
Texas Investment Company,
Wichita Falls, Texas.

December 10, 1936.

Account: 19,720.

Gentlemen:

We acknowledge receipt of your communication of December seventh relative to the remittance of $1.95.

covering balance due on your franchise tax for the current period.

This amount has been received and placed to
2054 the credit of your franchise tax account, and your corporation's right to do business has been revived as of December second, same being in good standing with this office to April 30, 1936.

Our supply of official receipt cards is exhausted and trust you will accept this communication as receipt of the above amount.

Very truly yours,
R. B. SANFORD,
Secretary of State.
By W. C. CASON.
WCC-s Franchise Tax Department.
Dec. 12 1935.

GUY ROGERS, being first duly sworn, testified as follows:

Being an attorney of record, I am, of course, reluctant to testify, but the record shows that I got a little more money out of this than I feel like I did, and I would like to sketch what the terms and the relationship has been here.

The first time the Wichita Royalty Company consulted us about anything, or any matter, was in the spring of 1930, perhaps in June. It seems that there had been a suit filed against the Wichita Royalty Company on some notes, that are in evidence, and we were asked concerning whether or not the Wichita Royalty Company could offset that, or receive credits upon it by virtue
2055 of the checks which were they presented to us, being check No. 571, 579, 591, 620, 635, 650, 657, and 710, all being payable to the plaintiff bank. And the inquiry was whether or not by virtue of their having been made payable to the bank's order, and having not been accounted for as we were advised, an offset could

be had. Those checks were photostated at the time, and I have before me now, which I exhibit, the original photostat made at the time. We received a retainer of $100.00, which is royalty Company's check No. 923. We agreed on no fee, and that is all that was received, and that was all that was considered at that time, because it was dismissed in August. Then a little later, in the fall, in October, the second suit was filed, then we were employed to defend the bank's suit upon the suit filed by the bank. We agreed with the royalty company jointly with Mr. John Davenport, who had been in the case, upon a $2,000.00 fee, half of it to be ours, and half to be his. Thereafter and before the filing of the cross action in February, 1931, and between those dates, as I recall, I asked for the first time to see the declaration of trust, and upon examining it and other matters which Mr. Scannell told me about, the facts as he understood them, I prepared, and in February filed this cross action. In the meantime, the bank had sued out a receivership, which by reference to the record, seems to have been January 9, 1931. That receivership was filed, assignments of error filed January 24, 1931, and the case was reversed some short time later, as reported in
2056 the 36th Southwestern Second, at page 1057.

We agreed upon a contingent fee as to the cross action distinguished between the defense of the note and the affirmative relief sought on cross action. The case was tried in 1932, and at that time I took a real estate mortgage upon the Oklahoma properties, specifically describing them, to secure the costs incident to an appeal. Later, and I think in 1933, Mr. Charles L. Black was employed, and given a deed of trust upon undescribed properties in Texas, to secure him in payment of $5,000.00 that was charged there, or as might be equivalent to a reasonable fee, and giving to me a second lien to secure such advances as I might make.

Mr. Black worked in this case, I am sure, at least thirty days. I was in Austin most of the time. He argued it and I did with other counsel, before a nine judge Court,

and I think Mr. Black earned the fee which he has received, and that his services were reasonably worth what he got.

As I recall, $1,250.00 was due him within a specified time, after the date of his employment. He did not receive that compensation. The deed of trust was foreclosed, with a view to his receiving compensation at a time when the bank had abstracted its judgment in several counties of the State, had levied upon and sold at sheriff's sale the Gray and Wheeler County Royalties, and were claiming title to them. And at
2057 a time when the value of those properties was unknown to me. And later the properties have proven valuable and I held the title as trustee to that which was bought at foreclosure sale and as additional security, intending no adverse title to the client which I represented. It was bought by me when Mr. Scannell was in the north on a donkey baseball venture. And upon the bank's filing a suit in cause No. 28,377, against Mr. Black and myself, and against the Royalty Company, seeking, as I recall, to invalidate the trustee's sale, seeking to establish title to the bank, under its foreclosure sale, and seeking to foreclose as against all of the assets of the royalty company, its judgment lien. The first pleading that we filed in that case was a disclaimer of any interest in the property, and there has been filed for record a release of the rights acquired, if any, by the recording of that trustee's deed.

Soon after obtaining their judgment in 1932, the plaintiff bank filed a lawsuit in Oklahoma, seeking to foreclose its judgment lien against the Oklahoma properties, and we pleaded the pendency of the appeal and in abatement of it. Made several trips over there, argued it before the Court, and finally prevented the bank's foreclosing its lien, and taking the title over to those properties.

For that service we charged and received $550.00, upon royalty Company's check No 1,049.00.

And for services in cause No. 28,377, we charged $500.00, and our part of the cash fee in 24,549
2058 being this case, is $1,000.00. In addition to that, we have charged certain expenses which I itemize here. We paid Mr. Davenport either direct or by indorsing the royalty company's check, $300.00, $200.00, $100.00, $68.05, $100.00 and $52.77, at the dates upon our checks as here shown, being a little more than his half of the fee, and I cannot account for our having paid him more than $1,000.00.

I have itemized here the days and dates, of all of the items of expense, and I have supporting checks which I exhibit to counsel.

We received the trust checks listed here, and entered them as credits as against the charges on the account.

I paid personally the district clerk for the transcript of $136.75. I paid the Court reporter $453.70 for the record. I paid the Railey Printing Company $435.00 for printing the brief in the Court of Civil Appeals and I paid Railey $135.00 for the printing of the application for the writ of error. There are other expenses which I have itemized here, and I have my supporting checks which I exhibit to counsel.

I received from the Royalty Company the amounts of money which I have itemized here. The result of it is that I personally paid out $3,120.22 and received $2,696.58. That my firm, Kilgore and Rogers has received $6,017.33 and expended, by the charges shown, $5,974.63, leaving a net fee in this lawsuit of $384.90.

Mr. Rogers:

I offer this in evidence.

(Marked "Defendant's Exhibit 191" as follows:)

2059 DEFENDANT'S EXHIBIT 191.

Recapitulation.

Receipts and Disbursements.

	D.	R.
Kilgore & Rogers:		
Receipts		$6,017.33
Disbursements	$5,974.63	
Guy Rogers:		
Receipts		2,696.58
Disbursements	$3,120.22	
	$9,094.85	$8,713.91
Partial fees to balance		380.94
	$9,094.85	$9,084.85

2060 Guy Rogers.

In account with Wichita Royalty Company.

	Dr.	Cr.
Paid Dist. Clerk for transcript	$136.75	$
Paid W. E. Donnelly, Court Reporter, for statement of Facts in #24549-B	453.70	
Paid Railey Printing Company for C. C. A. brief printing	435.00	
For App. Writ of Error Printing (Railey)	135.00	
2-16-32 Steno expense	2.50	
2-17-32 Steno expense	20.83	
3-29-32 Photostats	37.45	
4-16-32 Steno expense	27.50	
4-16-32 Photostats	4.20	

		Dr.	Cr.
4-22-32	Express on record to C. C. A.	1.07	
7-16-32	Steno expense	45.85	
10-18-32	Steno expense	18.16	
10-24-32	Steno expense	16.70	
11-19-32	Steno expense	22.93	
12-23-32	Steno expense	64.64	
2- 9-33	C. C. of Statement of Facts, Bacon v. Wright	6.20	
8- 7-34	Paid Chas. L. Black	250.00	
1- 4-35	Paid Chas. L. Black	250.00	
6-17-35	Paid Chas. L. Black	145.91	
12-19-35	Paid Chas. L. Black	287.52	
2-13-32	Paid Wichita Multigraphing Co.	2.50	
2-17-32	Paid Mrs. Birdie Zadik for steno exp.	20.83	
3-25-32	Paid Co. Clerk, Okmulgee County	4.25	
2-29-32	To John Davenport to balance joint fee	74.35	
6- 5-33	Paid Mollie Stipe for steno expense	3.00	
9- 2-33	To W. E. Donnelly	5.00	
9-11-33	To County Clk. Hughes County, Okla.	2.50	
12- 8-33	To County Clk. Navarro County	1.50	
12- 8-33	To County Clk. Eastland County	1.50	
12- 8-33	To County Clk. Young County	1.50	
12- 8-33	To County Clk. Archer County	1.50	
12-15-32	To W. E. Donnelly	25.00	
12-15-33	To County Clk. Okmulgee County	3.55	
12-15-33	To County Clk. Kay County, Okla., filing fee	2.55	
12-16-33	To County Clk. Gray County	2.00	

		Dr.	Cr.
4- 3-34	To County Clk. Wheeler County	2.00	
7- 2-35	To Milan E. Wallace, Auditor	42.50	
8- 6-35	To Driskill Hotel—G. R. Exp. at Austin	30.08	
9- 3-35	To A. C. Baldwin & Sons—Printing briefs	251.00	
9-17-36	To J. R. Wright, U. S. Marshal	6.00	
	Miscellaneous expense out of office	250.00	
	By checks as follows:		
2-16-32	No. 1030		148.71
2-16-32	No. 1031		750.00
12-31-32	5 Cashier's check		126.91
12-31-32	Cashier's check		126.11
12-31-32	Cashier's check		104.41
11-13-33	E. E. Scannell		277.84
12- 5-33	No. 1035		50.00
12-27-34	No. 1047		233.26
6- 1-35	Oil run checks		$354.09
6- 1-35	Cashier's check		203.84
6- 1-35	Cashier's check		158.16
6- 1-35	Cashier's check		148.25
9-15-36	No. 1006—expense, Dallas	$25.00	25.00
		$3,120.22	$2,696.58

Kilgore & Rogers.

In account with Wichita Royalty Company.

	Dr.	Cr.
To retainer, City Natl. Bank vs. Wichita Royalty Co.	100.00	
By check #923 in payment		100.00

		Dr.	Cr.
	To fee in case of City National Bank, Stephens County, Okla.	550.00	
	By check #1049 in payment		550.00
	To fee in trespass to try title and foreclosure lien case by City National Bank #28377-C	500.00	
	To fee in defense of City Nat'l Bank's suit on note, #24549-B	1000.00	
	To disbursements as follows:		
9-30-30	Check No. 501 to John Davenport	300.00	
10-16-30	Check No. 528 to John Davenport	200.00	
12-27-30	Check No. 624 to John Davenport	100.00	
4- 1-31	Check No. 741 to John Davenport	68.05	
5-26-31	Check No. 794 to John Davenport	100.00	
8- 6-31	Check No. 856 to John Davenport	52.77	
12-24-31	Check No. 668 to Dist. Clk. Wichita County Receivership tr.	30.75	
2- 2-31	To Check No. 680 First Natl. Bank for c. c. charter Texas Inv. Co.	5.00	
2-10-31	Check No. 684 to Dist. Clk. Wichita County for subpoena G. W. Peckham	1.20	
3- 3-31	Check No. 701 to Cleo Bowers, depositions	10.00	
3-30-31	Check No. 740 to Gene Sherrod—Trans testimony Harrell, Thomason & Abbott	17.00	
4- 6-31	Check No. 746 to Wichita Multigraphing Co. for forms	4.00	

		Dr.	Cr.
4-20-31	Check to First Natl. Bank for c. c. Geo. P.	30.50	
4-28-31	Check No. 766 to County Clk. Gray County for cert. copies	7.50	
4-28-31	Check No. 765 to Co. Clk. Wilbarger, c. c.	3.00	
4-28-31	Check No. 773 to Guarantee Abst. Co.	7.50	
5-14-31	Check No. 784 to W. Hy. Rogers, Abstracter	7.50	
	Check No. 792 to C. J. Meek	7.50	
5-19-32	Check No. 1095, Birdie Zadik, steno exp.	6.25	
6- 3-31	Check No. 804 to Wichita Multigraphing Co.	5.50	
8- 4-31	Check No. 888 to Joe E. Shelton, cert. copy deed from Porter to Knight	1.25	
9- 5-31	Check No. 892 to Noble Thomas, cert. copies	2.50	
9- 8-31	Check No. 895 to County Clk. Wheeler County Deed Bowden to Peckham	1.50	
12- 6-32	Check No. 1219 to County Clk. Kaufman Co. c. c. charge & verd. Bacon & Wright ...	1.25	
1- 7-33	Check No. 1247 Railway Express, exp. briefs	.44	
1-12-33	Check No. 1252 to Clk. Sup. Ct. c. c. testimony Bacon v. Wright	2.50	
1-30-33	Check No. 1265 Railway Express, Exp. Briefs	.47	
3-31-33	Check No. 1311 to Mrs. Zadik, steno exp.	29.00	
4-15-33	Check No. 1318 to Mrs. Zadik, steno exp.	50.00	
4-22-33	Check No. 1319 to Clerk C. C. A copy of opinion, Q. A. & P. vs. Bank	3.90	

	Dr.	Cr.
4-22-33 Check No. 1320 to Mrs. Zadik, steno exp.	25.00	
5- 8-34 Check No. 1539 to Cash for G. R. expense to Austin	35.00	
6- 8-34 Check to Clerk C. C. A. express deposit	5.00	
6- 7-34 Check to Driskill Hotel—G. R. expense at Austin	14.35	
6- 6-34 Check to Mrs. Walter Prechel, steno exp.	47.50	
6- 6-34 Check No. 1555, Mrs. Howard Bunch steno expense	40.00	
7- 2-35 Check No. 1861 to Railey's for brief	30.80	
7-28-35 Check No. 1876 to cash for G. R. expense to Austin	75.00	
8- 7-35 Check No. 1880 to Railway express for exp. on papers to Chas. L. Black	.53	
12-13-35 Check No. 2017 to Clerk Supreme Court, cert. copies of opinions	15.00	
7- 2-36 Draft—First Nat'l Bank, to sheriff Colorado Springs	4.95	
Sundry Tel. and Tel. Expense	30.74	
12-12-36 Paid Mollie Stipe, steno exp.	25.00	
12-17-36 Paid Wichita Falls Blue Print Co.	1.60	
By Wichita Royalty Company's checks as follows:		
9-29-30 Check No. 952		$600.00
10-16-30 Check No. 957		400.00
12-27-30 Check No. 971		200.00
13-14-31 Check No. 980		200.00
4-15-31 Check No. 990		100.00
5-20-31 Check No. 1000		100.00
8- 4-31 Check No. 1012		100.00

	Dr.	Cr.
5-31-36 Check No. 1060		750.00
12- 7-36 Check No. 1071		500.00
11-15-30 Check No. 965 indorsed to John Davenport	200.00	200.00
12- 9-33 Check No. 1036 Chas. L. Black	250.00	250.00
5-29-36 Check No. 1048 Chas. L. Black	500.00	500.00
4-25-35 Cashier's Check Chas. L. Black	115.48	115.48
5-31-36 Check No. 1053, c. c. #157684, Black	1351.85	1351.85
	$5974.63	$6017.33

2067 Mr. Rogers:

I also exhibit to counsel canceled checks in support of the items.

Cross Examination.

By Mr. Boone:

Out of our entire work, as reflected by this Exhibit, Defendant's Exhibit 191, I have netted $619.06, this particular case, and as shown, we have received $100.00 out of the first case filed and $550.00 out of another case. Whatever that statement shows is correct. The first fee was $100.00 on June 25, 1929; the next fee September 29, 1929 for $600.00; the next fee $400.00 October 16, 1929. The last two items were paid on this lawsuit—that is, paid on the bank's suit on the note. The $600.00 is allocated to the defense of this lawsuit rather than the first one; the $550.00 to the Oklahoma suit that the bank filed, and the trust voucher shows that to be its purpose. The $600.00 September 29, 1929, is allocated to this lawsuit. The $400.00 allocated to this lawsuit. $200.00 November 15, allocated to this lawsuit. The check. December 27, 1930, is credited to this lawsuit; March

14, 1931, credited to this lawsuit; April 15, 1931 for $100.00, credited to this lawsuit; May 20, 1931, $100.00 credited on this lawsuit; August 4, 1931, for $100.00, credited on this lawsuit; February 15, 1932, $148.71, on my individual personal account; February 15, 1932, $750.00, individually; December 5, 1933, $50.00 individually; December 27, 1934, $223.26, individually; May 31, 1936, $750.00, on the firm account; September 15, 1936, $25.00 individually; December 27, 1936, $500.00, the firm account; December 31, 1932, Journal Entry No. 1, $115.48, went to Charles L. Black; Journal Entry No. 8, $203.84, individually; Journal entry No. 11, $158.16, on my personal account. Journal entry No. 12, $148.25, on my personal account. Then I received from the clerk on May 28, 1936, $18.60, I personally did not receive that, I have no information about it, I received the check and turned it over to Mr. Scannell, I did not receive the money. May 28, 1936, $1,033.12, the same fact exists with reference to that, I received it and turned it over to Mr. Scannell. All of these checks listed, Guy Rogers, $85.50, $72.37, and John Kilgore, $80.10, and Guy Rogers, $11.53, $491.10, were just attorneys of record, and we received the checks and turned them over to Mr. Scannell; that was a release of a garnishment after the Supreme Court opinion and as attorney of record I received two checks and turned them over. Mr. Kilgore receipted for one or two of them.

2068

The first suit filed by the City National Bank, I looked over that petition. I looked over the photostatic copies of the checks that were given some time in June, 1930. The check for $600.00, September 29, 1930, is allocated to the defense of the bank's lawsuit in this case, as likewise the one October 16, 1930 for $400.00. The check for $1,000.00 October 16, 1930, I received that amount, but what portion of it, if any, this account shows, had been paid to Mr. Davenport, I am not certain, but the exhibits show definitely the day Mr. Davenport was paid.

2069

At the time I was employed in this case in 1930, I did not take it on a contingent basis. When it developed that perhaps there might be a cause of action against the bank, independent of the bank's suit on the note, I did take it on a contingent basis. It was between the filing of the bank's petition in October and the filing of the cross action in 1931, February 14. I have a copy of the contingent contract, I will hand you the original that was filed in the Courthouse, it was not acknowledged until February 23, 1931, and filed after that, or about that time. The clerk's docket will show when it was filed. It provides that I am to receive one-half of whatever is obtained by way of compromise, or whatever is recovered in this cause, upon the cross action, or whatever is recovered against Harrell or the bank. The payments to Mr. Black are reflected in my Exhibit 191, and approximate $3,500.00. He has been paid to date of judgment in the Supreme Court, that which accrued up to that time, it is to be paid only such further sums as he may earn prior to the final judgment in this case. He has answered a few inquiries of mine in respects to questions since the Supreme Court judgment. His charges are independent between him and the royalty company. When the case was tried in the lower Court, judgment was entered against the royalty company on this original note. Prior to the time of the entry of this judgment, I had had this contract of one-half of whatever I could recover. The royalty company
2070 did not supersede that judgment and the bank went forward under its judgment after the allotted time, as provided by law, to foreclose on some of the properties of the royalty company, and sold them under sheriff's sale, under the judgment, and the bank asserted title thereto. The Oklahoma mortgage and the Texas deed of trust are separate and bear different dates, and a substantial period of time between them. The mortgage on the Oklahoma property, as I recall, was as of the approximate date of the judgment and promptly filed and preceded any foreclosure on the part of the bank. The bank filed its suit to run an attachment on all of the

properties, they sued upon the judgment and foreclosed, as I recall, your attachment lien which you ran at the time of the filing of the suit. This mortgage was filed prior to the time the suit was filed. The deed of trust was given prior to the time of execution of the sale of the Texas property by the bank, given at the time of Mr. Black's employment, which I recall the fall of 1933, I am sure it was before any action was taken on the foreclosing of the Texas properties by the bank. The deed of trust was filed in several counties in Texas. When this case was appealed to the Court of Civil Appeals it was first affirmed, with five opinions, and it stayed there nearly two years. The Supreme Court granted a writ of error reversing and remanding the case, then I filed additional pleadings, and the case was carried to the Federal Court and is now here for trial.

2071 I do not endeavor to state an account between John Davenport and the Wichita Royalty Company, other than to the extent that our firm has paid him, the amount shown in Defendant's Exhibit 191. I show no payments that went direct from the Royalty Company to John Davenport, this contract is between Kilgore and Rogers and the Wichita Royalty Company, no one else has an interest in it, and I have not put it up as collateral for anything. E. E. Scannell has no interest in that contingent contract, and no one else, save Guy Rogers and John Kilgore.

Cross Examination.

By Mr. Humphrey:

One of the purposes of the suit, No. 28377-C, was to set aside this conveyance that was made from the trustee to me, as trustee of L. B. Rogers estate. The disclaimer was filed November 16, 1936, as a trustee of my father's estate. I have no recollection of the filing of the cross action in that suit, on behalf of myself and Mr. Black, to quiet title. My memory is that we did not. My remembrance is that no pleadings filed in that case by either Mr.

Black or myself, prior to the filing of the disclaimer, the Wichita Royalty Company pleaded in abatement of the suit, suggesting the pendency on appeal of the judgment upon which you declared, and my memory is that no pleading was filed in that case other than those pleas in abatement until the disclaimer. I may be wrong, I will try and check that up. But I said we had a valid mortgage on such properties as the Wichita Royalty Company might ultimately be shown to own, at the
2072 final determination of all of this litigation when it was determined what property should be repudiated, and what properties they did in fact own, and I do not have any personal recollection of our filing such pleading as you suggest. I bid this property in as trustee, or took title in my name as trustee of my father's estate, under his will. That purchase was made prior to the time the Supreme Court reversed and remanded this case, and the suit was pending at that time. I talked to Mr. Black about it, and he was past due some money, I have no independent recollection of what the facts are in respect to whether he requested me to foreclose.

Cross Examination.

By Mr. Morrow:

In the fall of 1930, I began to go into the matter rather intensively, and inquired into it and learned about the Marlborough Addition. Between the filing of this lawsuit in October and the filing of the cross action in February, and after having looked at the declaration of trust in the meantime, I did ascertain to the extent that the cross action was filed, the facts in respect to your inquiry. I found George Peckham had sold royalties to the royalty company. Mr. Scannell had the books and records of the Wichita Royalty Company, my client. I did not know then what kind or character of books were kept by the royalty company. The bank did not keep me from learning that fact. I had a right to look
2073 at my client's books. I learned George Peckham had been drawing a salary all these years. I

knew the bank was denying they owed the royalty company any money by way of deposit liability, on the contrary the bank was claiming that the royalty company was indebted to the bank on some notes.

Mr. Rogers:

I ask that the mandate of the Supreme Court be identified as an exhibit and that the last page be copied
2074 in the record. And in connection with that, state that the opinion of the Supreme Court attached to the certificate that is to be copied in the record, is reported, as I recall, in the 89 Southwestern (2) page 394.

(Marked "Defendant's Exhibit 192" as follows:)

DEFENDANT'S EXHIBIT 192.

The State of Texas.

To the District Court of Wichita County, Greetings:

Before our Supreme Court on the 11th day of December, A. D. 1935, the Cause, upon writ of error, to revise or reverse your judgment between Wichita Royalty Company, et al., Plaintiffs in Error, No. 6800 vs. The City National Bank of Wichita Falls, et al., Defendants in error. was determined; and therein our said Supreme Court made its order in these words:

This cause came on to be heard on writs of error to the Court of Civil Appeals for the Second Supreme Judicial District and the original transcript in said cause being before the Court as well as the transcript showing the proceedings had in said Court of Civil Appeals and these having been duly considered, because it is the opinion of the Court that, in part, there was error in the judgments of the Court of Civil Appeals and District
2075 Court, but, in part, there was no error in said judgments, it is therefore ordered, adjudged and

decreed that the judgments of the Court of Civil Appeals and District Court on both the direct and cross actions are reversed and the cause is remanded to the District Court for further proceedings in accordance with the instructions given in the opinion of this Court. It is further ordered that that part of the judgment denying recovery against the executors of J. A. Kemp's estate be affirmed, and that judgment be here rendered that said executors, Chas. I. Francis and Flora A. Kemp, go hence without day and recover their costs. It is further ordered that the defendants in error, City National Bank of Wichita Falls and J. T. Harrell, pay all costs in this behalf expended in this Court and the Court of Civil Appeals, and this decision, with a copy of the opinion herein delivered, be certified to the District Court for observance.

Wherefore we command you to observe the order of our said Supreme Court in this behalf, and in all things to have it duly recognized, obeyed and executed.

Witness the Hon. C. M. Cureton, Chief Justice of our Said Supreme Court, with the seal thereof annexed, at the City of Austin, this the 13th day of May, A. D. 1936.

(Seal) S. A. PHILQUIST,
Clerk.
By J. P. BYRNE,
Deputy.

(Indorsed on the back thereof) Dist. Court No. 24549-B
673 Received for Record May 14, 1936 R. L.
2076 Sanderford By ..... Garrett. Wichita Royalty Company, et al vs. The City National Bank of Wichita Falls, et al. Mandate Supreme Court of Texas 11-171-2 Issued May 13, 1936. S. A. Philquist, Clerk by J. P. Byrne, Deputy. To Wichita County.

Mr. Rogers:

In addition to the Supreme Court's original opinion in this case, the Court also rendered an opinion on a motion

for re-hearing, reported in 93 Southwestern (2), likewise, the Court in the case of Quanah Acme & Pacific Railway Company, on motion for re-hearing had some statement to make on the basis of liability in the Wichita Royalty Company case, it is likewise reported in 93 Southwestern (2).

Mr. Rogers:

I offer in evidence the contingent contract of Kilgore and Rogers, so that the record may express what the agreement is, rather than my verbal testimony from memory.

(Marked "Defendant's Exhibit 193" as follows:)

2077 DEFENDANT'S EXHIBIT 193.

The State of Texas,
County of Wichita.

Know All Men By These Presents: That Wichita Royalty Company has employed Kilgore and Rogers, a firm composed of John E. Kilgore and Guy Rogers, to defend the City National Bank's suit against it upon a $22,000.00 note more particularly described in Cause No. 24549-B pending in the local District Court, for the agreed consideration of $2,000.00, with $1,000.00 thereof having been paid.

Since this original agreement the Plaintiff Bank has, by amendment, sued upon another item of upwards of $14,000.00, seeking to hold Wichita Royalty Company liable as an indorser upon the note of the Texas Investment Company and a Receiver has been appointed and appeal therefrom taken. This company contemplates and will bring a Cross Action and/or suit against said Bank and/or J. T. Harrell and/or others for the recovery of moneys diverted from the company's account to the personal account of Geo. W. Peckham, and upon matters relating thereto.

For this additional service, the Company further agrees to give to Kilgore and Rogers, one-half of all they may recover on behalf of the company and/or collect by compromise and an undivided one-half interest in said cause of action and/or judgment and/or compromise is hereby transferred to Kilgore and Rogers with the understanding that no compromise can be made by said Attorneys without the approval of this company's trustee.

WICHITA ROYALTY COMPANY,
(Signed) By E. E. SCANNELL,
Trustee.

2078 The State of Texas,
County of Wichita.

Before Me, the undersigned, a Notary Public in and for Wichita County, Texas, on this day personally appeared E. E. Scannell, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of Wichita Royalty Company, a joint stock association, of Wichita Falls, Texas, and as the trustee thereof, and for the purposes and consideration therein expressed.

Given under my hand and seal of office this the 23rd day of February, A. D. 1931.

(Signed) PAULINE NOLTE,
(Seal) Notary Public Wichita Co. Texas.

The Witness:

I claim no title or right to any property under our mortgage, I think we would be entitled to a lien upon these properties which are ultimately determined to belong to the royalty company, as security for such, if any, unpaid balance of expenses and fees that we might be found to be entitled to. As far as I know, they do not owe Mr. Black anything, they owe my firm nothing except the balances as shown by this exhibit, such expenses
2079 as we are out incident to the trial of appeal of this case, either defending the appeal or prosecuting

one. It is true that the City National Bank filed an abstract of judgment in the various counties, they did not get out an execution within the year provided by the statute. It is true, it is my construction, that the appeal by the Wichita Royalty Company did not postpone the effectiveness of the judgment, abstract of judgment lien, beyond the period of one year, in the absence of execution, and you filed a lawsuit in trespass to try title for the identical properties that you had sold under that execution.

Re-Cross Examination.

By Mr. Boone:

The difference between the two figures, as shown from Exhibit 191, the total expenses due myself and John Kilgore, is $423.64, the exhibit reflects certain moneys were paid to me, for expenses.

With reference to Mr. Humphrey's question, it is my recollection that he told me he was going to get out execution, in the various counties on this property, and in fact, he did get out one on the Gray and Wheeler County property, then filed this other lawsuit. Up to that time we had repudiated the Gray and Wheeler transactions, and it was not intended that the deed of trust in Texas would cover property that had been repudiated. I worded it with that in view, because I did not want the
2080 instrument to have the effect of ratifying that which we were employed to disclaim. I explained that to Mr. Black and we so worded it as that there was no specific description of property, because I did not know what this company would be determined to own, whereas, in the Oklahoma mortgage, I did describe the property specifically.

2081 Mr. Rogers:

My testimony is that upon checking this with Mr. Lambert, it appears that on December 31, 1932,

Journal Entry No. 3, for $357.43, went direct to Charles L. Black, and my records nor my firm's records, do not show that we received that money; it appears that that amount of money plus that which my exhibit 191 shows to have gone to Mr. Black, totals within a very few dollars of $3,500.00, which was the amount which I thought he did receive. There is five or six dollars difference.

Mr. Rogers:

I wish to offer a question or two propounded to W. H. Peckham on the former trial, as follows:

"Q. Now, isn't it true, Mr. Peckham, that you and Mr. Scannell, for a long time, I do not mean to limit you to any particular time, but for a long time after Mr. Peckham's death, carried on a series of negotiations and conversations working toward the satisfactory adjustment of all of these matters so it would not come up and be generally known?

"A. Yes, sir.

"Q. That is true?

"A. That is true."

Mr. Humphrey:

We object to it because he is available as a witness and can be produced.

Mr. Boone:

Further, because it could not bind J. T. Harrell in any manner, because it would be ex parte as far as he is concerned.

2082 Mr. Humphrey:

We also adopt that objection.

Mr. Rogers:

We offer in evidence the interrogatories and answers propounded and answered by the witness J. J. Perkins, being interrogatories 58, 59 and 81, and the answers thereto.

(Marked "Defendant's Exhibit 195" as follows:)

DEFENDANT'S EXHIBIT 195.

Interrogatories 58, 59, and 81 propounded to J. J. Perkins and his answers thereto sworn to and filed by him September 25, 1936, are as follows:

When, during such period, did you, as a director consider that unless new funds were placed in the Bank, it would not be able long to withstand the continuance of such withdrawals?

What action did the officers and directors of the Bank take to meet such situation?

Answers to Interrogatories No. 58 and 59:

During the summer of 1931 the deposits of the City National Bank were shrinking quite rapidly and by Fall it was apparent that it would be necessary to obtain a large amount of funds, perhaps a million dollars, in order to safely meet the heavy withdrawals and keep the bank in liquid position.

An examination of the loans of the bank disclosed that nearly all of them had been made to local people
2083 and to force their collection would have meant bankruptcy to a large number of the makers of these obligations and would have greatly disturbed the feeling of unrest not only in Wichita Falls but in this entire section of the country.

The Board of Directors discussed this situation and decided to borrow the necessary funds by pleading the notes of the bank as collateral. In furtherance of this the Board of Directors signed a personal guarantee to the Federal Reserve Bank in Dallas for the sum of $750,000.00 to guarantee the repayment of any money loaned to the City National Bank of Wichita Falls by the Federal

Reserve Bank. Immediately after the signing of this guarantee the City National Bank borrowed from the Federal Reserve Bank of Dallas $460,000.00 and gave as collateral some of the notes receivable of the City National Bank. The personal guarantee of the Directors also served as an additional security on this loan.

At about the same time the City National Bank borrowed from the First National Bank of Wichita Falls $150,000.00 and the City National Bank executed its note for that amount and which note was indorsed by the Directors of The City National Bank, including myself.

We also borrowed from the First National
2084 Bank in Dallas $100,000.00 and this note was also indorsed by the City National Bank directors.

At a later date there had been some payments made on this loan and perhaps one or two renewals and some additional funds were borrowed from the First National Bank of Wichita Falls which, as I recall, were handled in the same way.

I do not have the details of these loans, nor the time at which they were paid, but I do know they have all long since been paid and were paid by the City National Bank. None of the indorsers upon said obligations either to the First National Bank of Wichita Falls, the First National Bank in Dallas or to the Federal Reserve Bank ever had to pay anything thereon but all of the obligations were satisfied and paid by the City National Bank.

Interrogatory No. 81:

Kindly detail and explain fully why it was that, as an interested party, you joined in the formation of a new "in" bank to succeed and oil "of" bank and in the liquidation of such old and established banking institution in this vicinity?

Answer to Interrogatory No. 81:

The owners of the stock of City National Bank were widely scattered and after going over the list of

2085 the stockholders there were many of the stockholders who could not pay an assessment on the stock of the old bank and some who probably would not without litigation, and after a full discussion, it was deemed best to organize a new bank to be known as the City National Bank of Wichita Falls. In using this name the bank could still have the advantage of the prestige of the old bank. The Reconstruction Finance Corporation purchased $400,000.00 preferred stock in the new institution and it was immediately given authority to begin business, which it did at the end of the banking holiday.

2086 Mr. Boone:

We offer this instrument in evidence, Defendant's Exhibit 194.

Legal Services.

Date	Check No.	C. L. Black	Guy Rogers	John Davenport	Grundy Shapard	E. E. Scannell
1929.						
12-31	868	.....	.....	.....	.....	400.00
1930.						
1-21	875	.....	.....	.....	.....	200.00
1-31	883	.....	.....	.....	.....	200.00
2-15	889	.....	.....	.....	.....	200.00
2-28	892	.....	.....	.....	.....	200.00
3-15	896	.....	.....	.....	.....	200.00
3-31	897	.....	.....	.....	.....	200.00
4-15	903	.....	.....	.....	.....	200.00
4-30	905	.....	.....	.....	.....	200.00
5-16	909	.....	.....	.....	.....	200.00
5-31	912	.....	.....	.....	.....	200.00
6-13	917 (Help)	....	.....	.....	.....	180.00
6-13	918	.....	.....	.....	.....	200.00
6-24	921	.....	.....	500.00	.....	.....
6-25	922	.....	.....	.....	.....	200.00
6-25	923	.....	100.00	.....	.....	.....

1790

7-16	931	.....	.....	.....	.....	200.00
7-17	932	.....	.....	200.00	.....	.....
7-31	936	.....	.....	.....	.....	200.00
8-15	939	.....	.....	.....	.....	200.00
8-30	940	.....	.....	.....	.....	200.00
9- 2	941	.....	.....	250.00	.....	.....
9-18	949	.....	.....	.....	.....	200.00
9-29	952	.....	600.00	.....	.....	.....
9-29	953	.....	.....	.....	.....	400.00
10-16	957	.....	400.00	.....	.....	.....
10-16	958	.....	.....	.....	.....	200.00
11-14	963	.....	.....	.....	.....	200.00
11-15	965	.....	200.00	.....	.....	.....
12- 1	968	.....	.....	.....	.....	200.00
12-15	969	.....	.....	.....	.....	200.00
12-27	971	.....	200.00	.....	.....	.....
12-30	973	.....	.....	.....	.....	200.00
1931.						
1- 9	974	.....	.....	.....	.....	145.00
1-14	978	.....	.....	.....	.....	255.00
3-14	980	.....	200.00	.....	.....	.....
3-24	983	.....	.....	.....	.....	100.00

Date	Check No.	C. L. Black	Guy Rogers	John Davenport	Grundy Shapard	E. E. Scannell
4- 1	986	.....	.....	.....	.....	150.00
4-15	990	.....	100.00	.....	.....	.....
4-15	992	.....	.....	.....	.....	200.00
4-20	994	.....	.....	.....	.....	100.00
5-20	999	.....	.....	.....	.....	200.00
5-20	1000	.....	100.00	.....	.....	.....
6-12	1005	.....	.....	.....	.....	140.00
6-15	1006	.....	.....	.....	.....	60.00
7- 1	1008	.....	.....	.....	.....	200.00
8- 4	1012	.....	100.00	.....	.....	.....
7-31	1013	.....	.....	.....	.....	200.00
8-31	1016	.....	.....	.....	.....	200.00
10- 1	1018	.....	.....	.....	.....	200.00
10- 7	1020	.....	.....	.....	.....	3.35
10-29	1023	.....	.....	.....	.....	200.00
12- 1	1026	.....	.....	.....	.....	200.00
1932.						
1- 1	1027	.....	.....	.....	.....	200.00
2- 2	1028	.....	.....	.....	.....	200.00
2-16	1030	.....	148.71	.....	.....	.....
2-16	1031	.....	750.00	.....	.....	.....
2-25	1032	.....	.....	.....	.....	95.00

1933.						
12- 5	1035	.....	50.00	.....	.....	.....
12- 9	1036	250.00	.....	.....	.....	.....
1934.						
2-23	1042	.....	.....	.....	.....	150.00
2-28	1043	.....	.....	.....	.....	150.00
4-14	1044	.....	.....	.....	.....	256.94
6- 6	1045	.....	.....	.....	.....	273.56
10-20	1046	.....	.....	.....	.....	578.39
12-27	1047	.....	223.26	.....	.....	.....
1936.						
5-29	1048	500.00				
5-29	1049	.....	550.00	.....	.....	.....
5-29	1050	(Charged to Cash on Hand)				541.92
5-29	1051	.....	.....	.....	.....	2,860.56
5-31	1052	.....	.....	.....	.....	28.90
5-31	1052	1,351.85				
5-31	1054	(Charged to Cash on Hand)				1,508.71
5-31	1055	(Charged to Cash on Hand)				563.47
5-31	1059	.....	.....	.....	750.00	.....
5-31	1060	.....	750.00	.....	.....	.....

Date		Check No.	C. L. Black	Guy Rogers	John Davenport	Grundy Shapard	E. E. Scannell
6-30		1061	.....	.....	.....	.....	69.55
7- 6		1064	.....	.....	.....	.....	50.00
9-15		1066	.....	25.00	.....	.....	.....
9-15		1067	.....	.....	.....	35.00	.....
10-27		1068	.....	.....	.....	500.00	.....
12- 7		1070	.....	.....	.....	300.00	.....
12- 7		1071	.....	500.00	.....	.....	.....
1937.							
1- 5		1072	.....	.....	.....	.....	109.81
	Items						
	Cash Sundry						
5-31-32			.....	.....	.....	.....	50.00
5-31-32	(Cash on Hand) 1,359.57 (Oil runs—JE #14)		.....	.....	.....	.....	.....
12-31-32	JE #3		.....	357.43	.....	.....	.....
5-31-33			.....	.....	.....	.....	1,015.04
9-15-33	(Cash on Hand) 380.00 (Oil runs—JE #2)		.....	.....	.....	.....	.....
9-30-33			.....	.....	.....	.....	380.80
12-24-33	(Cash on Hand) 131.41 (Oil runs—JE #4)		.....	.....	.....	.....	.....

1934-35.					
JE #1	.....	115.48	.....	.....	.....
JE #2	.....	.....	.....	.....	108.58
JE #6 runs to K & R, Apr. 1935		354.09	.....	.....	.....
JE #8	.....	203.84	.....	.....	.....
JE #11	.....	158.16	.....	.....	.....
JE #12	.....	148.25	.....	.....	.....
JE #14	.....	.....	.....	.....	250.00
1935-36.					
Cash J. Entries					
581.56 (From Oil runs etc.)		.....	.....	.....	.....
Cash (Closing JE)	.....	.....	.....	500.00	.....
Totals	$2,101.85	$6,334.22	$950.00	$2,085.00	$17,574.58

Note: The above amounts do not include the value of oil properties, if any, transferred from the company to the above parties. Nor is there included the
2092 value of oil runs from properties of the Wichita Royalty Company and paid directly to said parties. Against the three checks issued to E. E. Scannell in May, 1936, and totaling $2,614.10, he is to be credited with such portion of same as was applied to company expenses. The foregoing does not include any cash paid to the individuals since June 1, 1936.

In addition to the foregoing items the District Clerk of Wichita County, Texas, in Cause No. 27856-B, paid the following sums for the benefit of the Wichita Royalty Company:

Date.	How Paid.	Funds Delivered to.	Amount.
5-28-36	Clerk's Check	Guy Rogers	18.60
5-28-36	Oil Company check indorsed by Clerk	Do.	1,033.12
6- 5-36	Do.	E. E. Scannell	2,640.13
6- 2-36	Do.	Guy Rogers	85.56
6-13-36	Do.	Do.	72.37
7-10-36	Do.	J. Kilgore	80.10
10-26-36	Do.	Guy Rogers	11.53
6-13-36	Clerk's Check (C. N. B. Judgment)	Do.	491.10

Without further information and records, the disposition of the above funds may not be determined as between the Royalty Company and the parties actually taking physical receipt of the above items.

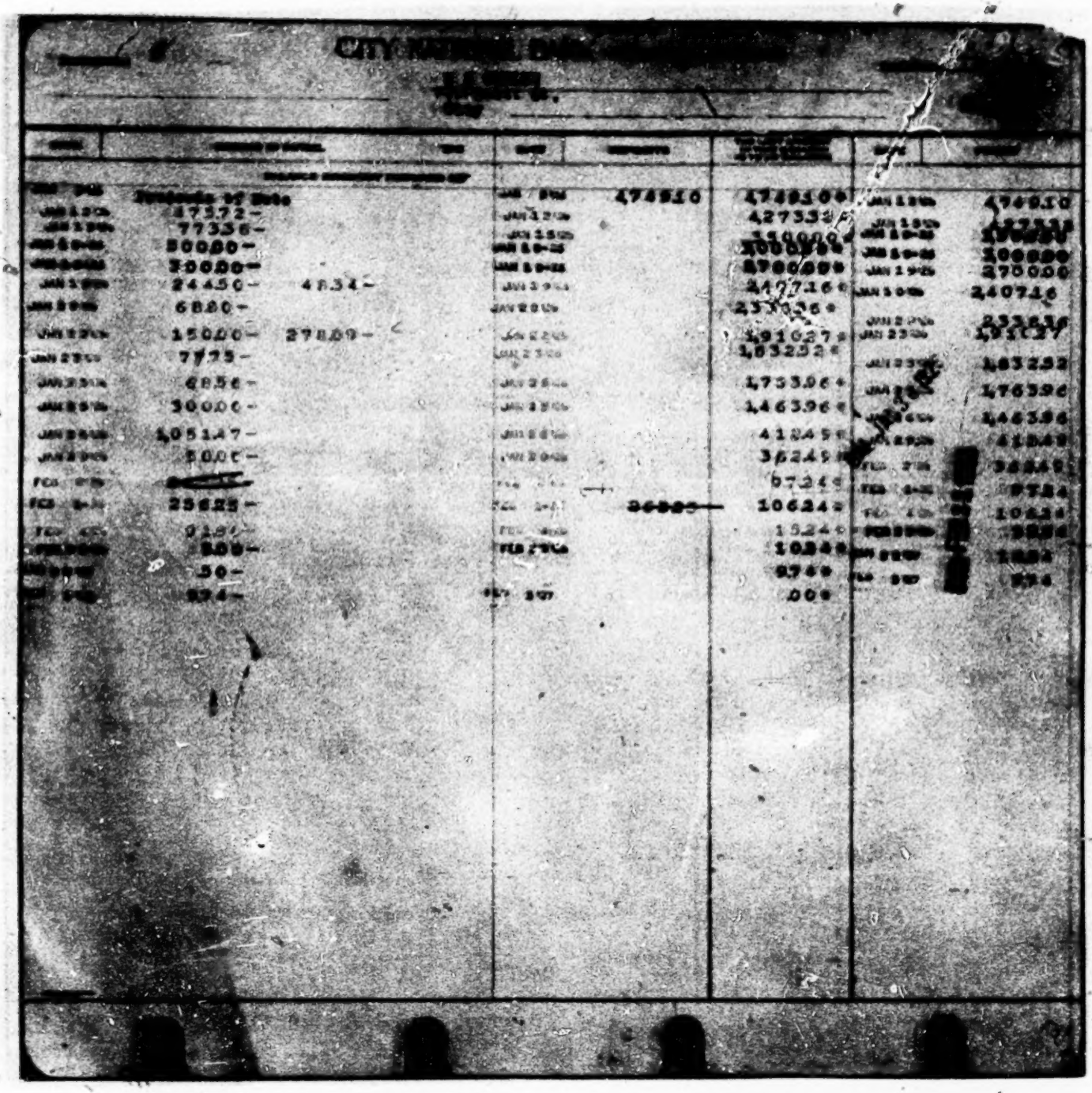
2093 In the District Court of the United States, Northern District of Texas, Wichita Falls Division.

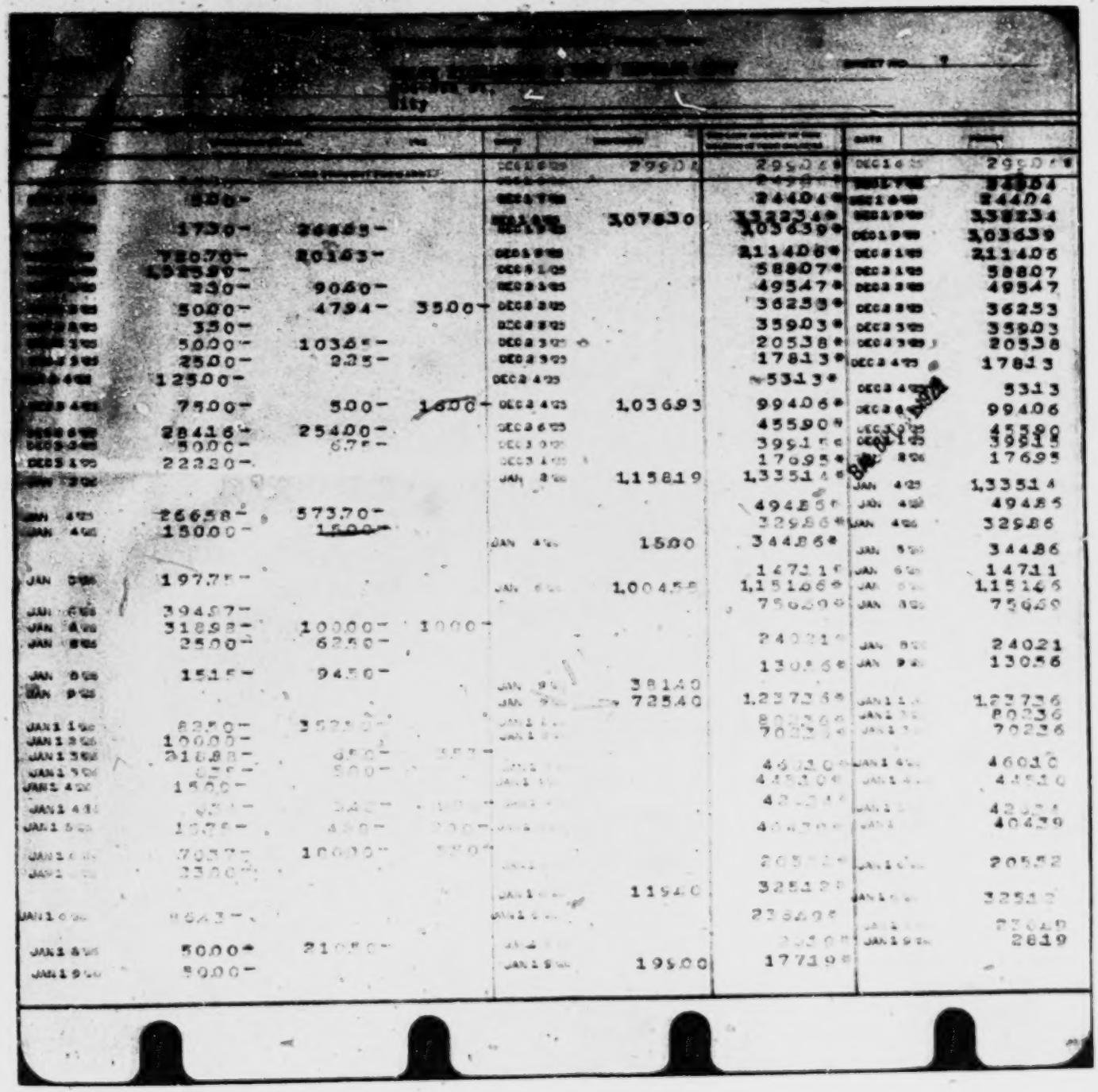
City Nat'l Bank of Wichita Falls,
vs.
Wichita Royalty Company, et al.

Mr. Rogers:

We now wish to offer in evidence photostatic copies of the deposit account of W. S. Curlee, and Welch, Richardson & Kemp, for the month of January, 1926, showing upon that date the deposit to those accounts of the two checks of $2,675.00 that are in evidence, and these are but the corresponding bank records showing their entry and I offer them in evidence.

(Marked "Defendant's Exhibits A & B" as follows:)





2096 Mr. Rogers:

In that connection, with those several accounts and in connection with certain testimony, we offer in evidence the checks that are identified by the records, in order of their issuance, being only checks that are identified by this record, as involved in this controversy, directly or indirectly.

(Marked "Defendant's Exhibit C" as follows:)

DEFENDANT'S EXHIBIT C.

(Consisting of a number of checks, numbered 1 to 1339, drawn on the City National Bank and signed by E. E. Scannell for trustee, except checks Nos. 102, 463, and 466, which are drawn on the Security National Bank and signed by E. E. Scannell, for trustee, and checks Nos. 531, 550, 653 and 670, which are drawn on the City National Bank and signed by G. W. Peckham, trustee.

Dated.	No.	Payee.	Amount.	Perforated.	Indorsement.
6-15-23	1	B. L. Fain	5,000.00	6- 5-23	B. L. Fain
6-15-23	2	W. H. Peckham	1,020.00	6- 7-23	W. H. Peckham
6-15-23	3	B. L. Fain	2,533.33	6- 7-23	B. L. Fain
6-27-23	9	City Nat'l	10,308.34	6-26-23	None
7- 3-23	13	Geo. W. Peckham	500.00	7- 5-23	Geo. W. Peckham
7- 5-23	17	B. L. Fain	5,133.33	7- 6-23	B. L. Fain
7- 6-23	18	City Nat'l	505.00	7- 6-23	None
7- 9-23	20	B. L. Fain	2,550.00	7- 9-23	B. L. Fain
8- 1-23	34	G. W. Peckham	500.00	8- 3-23	G. W. Peckham
8- 2-23	36	B. L. Fain	4,627.11	8- 3-23	B. L. Fain
8- 1-23	37	B. L. Fain	5,166.65	8- 3-23	B. L. Fain
8-14-23	46	W. H. Peckham	9,219.51	8-14-23	W. H. Peckham, G. W. Peckham

Dated.	No.	Payee.	Amount.	Perforated.	Indorsement.
8-14-23	47	B. L. Fain	1,560.00	8-14-23	B. L. Fain, G. W. Peckham
8-14-23	48	W. H. Peckham	1,033.33	8-14-23	W. H. Peckham, G. W. Peckham
8-14-23	49	B. L. Fain	4,120.97	8-14-23	B. L. Fain, G. W. Peckham
8-15-23	51	City Nat'l	15,000.00	8-15-23	None
8-31-23	54	G. W. Peckham	500.00	9- 1-23	G. W. Peckham
9- 1-23	58	City Nat'l	5,000.00	9- 1-23	None
9-30-23	73	G. W. Peckham	500.00	10-16-23	G. W. Peckham
9-29-23	74	B. L. Fain	2,000.00	10- 1-23	B. L. Fain
10-17-23	85	B. L. Fain	2,000.00	10-18-23	B. L. Fain
10-20-23	86	City Nat'l	5,000.00	10-20-23	None
10-27-23	88	B. L. Fain	1,500.00	10-29-23	B. L. Fain
10-31-23	92	G. W. Peckham	500.00	11- 1-23	G. W. Peckham
11-14-23	101	City Nat'l	2,200.00	11-16-23	None
11-14-23	102	City Nat'l (Drawn on Security Nat'l)	500.00	11-16-23	None
11-30-23	115	G. W. Peckham	500.00	12- 1-23	G. W. Peckham
12- 3-23	120	B. L. Fain	1,520.00	12- 4-23	B. L. Fain
12-19-23	134	G. W. Peckham	500.00	12-24-23	G. W. Peckham
1-19-24	147	City Nat'l	5,000.00	1-16-24	G. W. Peckham

1-30-24	149	Geo. W. Peckham	500.00	1-31-24	G. W. Peckham
2- 2-24	154	B. L. Fain	12,000.00	2- 2-24	B. L. Fain
2- 9-24	160	G. W. Peckham	2,500.00	2-11-24	G. W. Peckham
2-29-24	169	G. W. Peckham	1,200.00	2-29-24	G. W. Peckham
3- 1-24	171	G. W. Peckham	500.00	3- 4-23	G. W. Peckham
3- 1-24	180	G. W. Peckham	30.95	3-13-24	G. W. Peckham
3-31-24	188	G. W. Peckham	500.00	3-29-24	G. W. Peckham
3-17-24	185	G. W. Peckham	9,250.00	3-18-24	G. W. Peckham
4-30-24	205	G. W. Peckham	500.00	5- 1-24	G. W. Peckham
5-31-24	221	G. W. Peckham	500.00	5-31-24	G. W. Peckham
6-28-24	232	G. W. Peckham	500.00	6-28-24	G. W. Peckham
7- 2-24	237	Security Nat'l	11,000.00	7- 3-24	None
7-24-24	246	Security Nat'l	10,000.00	7-26-24	None
7-30-24	247	G. W. Peckham	500.00	7-31-24	G. W. Peckham
7-31-24	251	G. W. Peckham	55.35	7-31-24	G. W. Peckham
9- 3-24	261	G. W. Peckham	500.00	9- 3-24	G. W. Peckham
9-15-24	265	Security Nat'l	434.37	9-15-24	B. L. Fain
9-30-24	272	G. W. Peckham	500.00	10-18-24	G. W. Peckham
10-22-24	284	City Nat'l	7,802.50	10-21-24	None
10-23-24	285	City Nat'l	2,500.00	10-22-24	None
10-31-24	286	G. W. Peckham	500.00	10-31-24	G. W. Peckham
11- 7-24	293	City Nat'l	2,000.00	11- 8-24	None
11-17-24	299	City Nat'l	1,500.00	11-17-24	None

Dated.	No.	Payee.	Amount.	Perforated.	Indorsement.
11-29-24	303	City Nat'l	1,528.89	11-29-24	None
11-29-24	304	G. W. Peckham	500.00	11-29-24	G. W. Peckham
12- 4-24	309	B. L. Fain	9,000.00	12- 4-24	B. L. Fain
12-23-24	317	G. W. Peckham	695.00	12-23-24	G. W. Peckham
12-31-24	320	G. W. Peckham	500.00	1- 3-25	G. W. Peckham
2- 4-25	338	G. W. Peckham	400.00	2- 5-25	G. W. Peckham
2-18-25	344	City Nat'l	10,168.90	2-18-25	None
2-25-25	347	G. W. Peckham	400.00	3- 5-25	G. W. Peckham
3-31-25	357	G. W. Peckham	400.00	4- 2-25	G. W. Peckham
4-30-25	370	G. W. Peckham	400.00	5- 2-25	G. W. Peckham
5- 5-25	373	G. W. Peckham	2,500.00	5- 5-25	G. W. Peckham
5-25-25	378	G. W. Peckham	400.00	6- 2-25	G. W. Peckham
6-19-25	384a	City Nat'l	8,122.67	6-19-25	None
6-24-25	385	G. W. Peckham	6,000.00	6-25-25	G. W. Peckham
6-29-25	387	G. W. Peckham	5,000.00	6-29-25	G. W. Peckham
6-30-25	388	G. W. Peckham	400.00	7- 7-25	G. W. Peckham
7-20-25	398	G. W. Peckham	10.00	7-27-25	G. W. Peckham
7-31-25	400	G. W. Peckham	400.00	8- 3-25	G. W. Peckham
8- 8-25	406	City Nat'l	10,000.00	8- 8-25	None
8-24-25	408	City Nat'l	4,867.78	8-24-25	None
8-31-25	411	G. W. Peckham	400.00	9-10-25	G. W. Peckham
9-30-25	422	G. W. Peckham	400.00	9-30-25	G. W. Peckham

10- 8-25	427	City Nat'l	5,500.00	10- 8-25	None
10-31-25	433	G. W. Peckham	400.00	11- 2-25	G. W. Peckham
11- 6-25	438	G. W. Peckham	4.75	11- 7-25	G. W. Peckham
12- 1-25	444	G. W. Peckham	400.00	12- 3-25	G. W. Peckham
12-28-25	451	City Nat'l	1,250.00	12-28-25	Cr to a/c G. W. Peckham
1- 4-25-6	452	G. W. Peckham	5,000.00	1- 4-26	G. W. Peckham
12-31-25	453	G. W. Peckham	400.00	12-31-25	G. W. Peckham
1-11-26	458	City Nat'l	5,000.00	1-11-26	None
1-18-26	461	City Nat'l	15,769.07	1-18-26	None
1-16-26	462	E. E. Scannell	1,200.00	1-18-26	E. E. Scannell
1-18-26	463	E. E. Scannell ..... (Drawn on Security Nat'l)	300.00	1-18-26	E. E. Scannell
1-19-26	464	E. E. Scannell	400.00	1-20-26	E. E. Scannell
1-30-26	466	G. W. Peckham ..... (Drawn on Security Nat'l)	400.00	5- 3-26	G. W. Peckham
2-27-26	477	G. W. Peckham	400.00	2-27-26	G. W. Peckham
3- 6-26	478	City Nat'l	17,623.70	3-16-26	None
3- 6-26	479	Security Nat'l	6,000.00	3-10-26	None
3-31-26	485	City Nat'l	7,500.00	3-31-26	None
4- 1-26	487	G. W. Peckham	400.00	4- 3-26	G. W. Peckham
4-23-26	495	City Nat'l	300.00	4-23-26	None
5- 3-26	497	G. W. Peckham	400.00	5- 5-26	G. W. Peckham

Dated.	No.	Payee.	Amount.	Perforated.	Indorsement.
5-20-26	503	G. W. Peckham	3,000.00	5-20-26	G. W. Peckham
5-30-26	505	G. W. Peckham	400.00	5-29-26	G. W. Peckham
5-29-26	506	City Nat'l	500.00	6- 2-26	None
5-29-26	507	City Nat'l	1,500.00	6- 2-26	G. W. Peckham
6-16-26	510	City Nat'l	4,500.00	6-16-26	None
6-30-26	512	G. W. Peckham	400.00	7- 6-26	G. W. Peckham
7-13-26	519	City Nat'l	1,000.00	7-15-26	None
7-16-26	521	City Nat'l	300.00	7-17-26	None
7-31-26	523	G. W. Peckham	400.00	8- 2-26	G. W. Peckham
8- 2-26	525	City Nat'l	4,000.00	8- 2-26	None
8-20-26	529	G. W. Peckham	400.00	8-30-26	G. W. Peckham by E. E. Scannell
8-27-26	531	City Nat'l	500.00	8-30-26	None
		(Signed Wichita Royalty Company by G. W. Peckham trustee.)			
8-27-26	532	City Nat'l	4,357.58	8-27-26	None
		(Signed Wichita Royalty Company by G. W. Peckham trustee.)			
9-30-26	537	G. W. Peckham	400.00	9-30-26	G. W. Peckham
10-13-26	540	City Nat'l	300.00	10-19-26	None
10-13-26	541	City Nat'l	10,000.00	10-14-26	None
10-30-26	545	G. W. Peckham	400.00	10-30-26	G. W. Peckham
11-20-26	550	City Nat'l	7,500.00	11-20-26	Deposited to Cr of G. W. Peckham
		(Signed Wichita Royalty Company by G. W. Peckham trustee.)			

11-30-26	552	G. W. Peckham	400.00	12- 2-26	G. W. Peckham
12- 2-26	554	City Nat'l	1,500.00	12- 2-26	G. W. Peckham by A. B.
12-22-26	556	G. W. Peckham	700.00	12-22-26	G. W. Peckham
12-22-26	556a	G. W. Peckham	538.16	1- 4-27	G. W. Peckham
12- 7-26	557	City Nat'l	1,920.00	12-15-27	None
12-31-26	564	G. W. Peckham	400.00	1- 4-27	G. W. Peckham
1-11-27	569	City Nat'l	300.00	1-15-27	None
1-19-27	571	City Nat'l	2,000.00	1-19-27	None
1-31-27	574	G. W. Peckham	400.00	2- 2-27	G. W. Peckham
2-19-27	579	City Nat'l	2,500.00	2-19-27	None
2-28-27	581	G. W. Peckham	400.00	3- 3-27	G. W. Peckham
3- 1-27	582	City Nat'l	500.00	3- 8-27	None
3- 1-27	583	City Nat'l	301.82	2-16-27	G. W. Peckham
3- 1-27	584	City Nat'l	500.00	3- 3-27	None
3-23-27	591	City Nat'l	2,000.00	3-23-27	G. W. Peckham
3-31-27	594	G. W. Peckham	400.00	4- 2-27	G. W. Peckham
4-11-27	598	B. L. Fain	500.00	4-12-27	B. L. Fain
4-14-27	599	City Nat'l	300.00	4-23-27	None
4-23-27	602	B. L. Fain	1,000.00	4-23-27	B. L. Fain, G. W. Peckham

Dated.	No.	Payee.	Amount.	Perforated.	Indorsement.
4-30-27	604	G. W. Peckham	400.00	4-30-27	G. W. Peckham
5- 6-27	307	B. L. Fain	500.00	5- 6-27	B. L. Fain, G. W. Peckham
5-16-27	610	B. L. Fain	1,000.00	5-16-27	B. L. Fain, G. W. Peckham
5-31-27	614	G. W. Peckham	400.00	6- 8-27	G. W. Peckham
6- 8-27	615	City Nat'l	500.00	6- 8-27	None
6-18-27	620	City Nat'l	1,200.00	8-18-27	None
6-30-27	623	G. W. Peckham	400.00	7- 1-27	G. W. Peckham
7-16-27	628	City Nat'l	1,500.00	7-16-27	None
7-31-27	630	G. W. Peckham	400.00	8- 1-27	G. W. Peckham
8-16-27	635	City Nat'l	1,500.00	8-16-27	None
		(Signed Wichita Royalty Company by G. W. Peckham Trustee.)			
9- 3-27	637	G. W. Peckham	400.00	9- 6-27	G. W. Peckham
9-30-27	643	G. W. Peckham	400.00	10- 3-27	G. W. Peckham
10- 1-27	644	G. W. Peckham	62.85	10- 1-27	G. W. Peckham
10-14-27	650	City Nat'l	2,400.00	10-15-27	None
11- 1-27	653	G. W. Peckham	400.00	11- 5-27	G. W. Peckham
11-25-27	657	City Nat'l	1,800.00	11-25-27	None
11-30-27	659	G. W. Peckham	400.00	12- 3-27	G. W. Peckham
12-20-27	670	G. W. Peckham	147.33	12-21-27	G. W. Peckham
		(Signed Wichita Royalty Company by G. W. Peckham Trustee.)			

12-27-27	672	G. W. Peckham	400.00	12-27-27	G. W. Peckham
1-28-28	682	City Nat'l	2,000.00	1-28-28	None
1-31-28	684	G. W. Peckham	400.00	1-31-28	G. W. Peckham
2-29-28	692	G. W. Peckham	400.00	3- 6-28	G. W. Peckham
3-31-28	701	G. W. Peckham	400.00	3-31-28	G. W. Peckham
4- 6-28	702	City Nat'l	548.12	4- 6-28	None
4-11-28	706	G. W. Peckham	169.75	4-11-28	G. W. Peckham
11-20-28	710	City Nat'l	1,850.00	4-23-28	None
4-30-28	713	G. W. Peckham	400.00	5- 1-28	G. W. Peckham
5-17-28	717	City Nat'l	220.00	5-17-28	None
5-21-28	718	G. W. Peckham	140.68	5-21-28	G. W. Peckham
5-31-28	720	G. W. Peckham	400.00	6-12-28	G. W. Peckham
6- 1-28	721	City Nat'l	424.66	6- 1-28	None
7- 2-28	727	G. W. Peckham	400.00	7- 9-28	G. W. Peckham
7-23-28	733	City Nat'l	220.00	7-23-28	None
7-31-28	738	G. W. Peckham	400.00	8- 7-28	G. W. Peckham
8-31-28	747	G. W. Peckham	400.00	9-10-28	G. W. Peckham
9-27-28	752	City Nat'l Bank	424.66	9-27-28	Deposited in City Nat'l Bank a/co G. W. Peckham
10- 1-28	754	G. W. Peckham	400.00	10-12-28	G. W. Peckham
10-31-28	762	G. W. Peckham	400.00	11- 1-28	G. W. Peckham
11-30-28	767	G. W. Peckham	400.00	illegible	G. W. Peckham

Dated.	No.	Payee.	Amount.	Perforated.	Indorsement.
12- 4-28	768	City Nat'l	2,000.00	12- 4-28	None
12-31-28	775	G. W. Peckham	400.00	12-31-28	G. W. Peckham
1-14-29	778	G. W. Peckham	21.63	2- 5-29	G. W. Peckham
1-30-29	785	G. W. Peckham	400.00	2- 5-29	G. W. Peckham
2-19-29	791	City Nat'l	1,500.00	2-23-29	None
3- 1-29	793	G. W. Peckham	400.00	3- 8-29	G. W. Peckham
3-26-29	797	G. W. Peckham	400.00	3-26-29	G. W. Peckham
4-30-29	806	G. W. Peckham	400.00	5- 1-29	G. W. Peckham
5-31-29	813	G. W. Peckham	400.00	5-31-29	G. W. Peckham
6- 7-29	814	City Nat'l	1,500.00	6- 8-29	None.
7- 1-29	821	G. W. Peckham	400.00	7- 9-29	G. W. Peckham
7-15-29	824	City Nat'l	212.49	7-15-29	None
7-31-29	829	G. W. Peckham	400.00	8-29-29	G. W. Peckham
8-30-29	836	City Nat'l	1,000.00	8-29-29	None
8-30-29	837	G. W. Peckham	400.00	9- 5-29	G. W. Peckham
9-30-29	843	G. W. Peckham	400.00	10- 2-29	G. W. Peckham
10-31-29	852	G. W. Peckham	400.00	11- 1-29	G. W. Peckham
11-23-29	856	City Nat'l	1,500.00	11-23-29	None
11-29-29	857	Knight & Hines	84.41	11-29-29	Knight & Hines
1-24-30	880	Marlborough Add.	1,500.00	1-25-30	Marlborough Addition Texas Inv. Co. of Wichita Falls

2-24-30	890	City Nat'l	1,000.00	2-24-30	None
4-10-30	898	City Nat'l	1,000.00	4-10-30	None
5-13-30	908	Tex. Inv. Co. of W. F.	500.00	5-14-30	c/o Texas Inv. Co.
6-14-30	920	City Nat'l	1,500.00	6-18-30	None
7-14-30	930	City Nat'l	3,055.42	7-16-30	None
12-17-30	970	W. T. Knight, Atty. in Fact	102.83	12-20-30	W. T. Knight, Atty. in Fact. Knight & Hines by O. H. Hines
3-10-23	1253	City Nat'l	2,500.00	3-10-23	Cr a/c B. L. Fain
3-13-23	1262	G. W. Peckham	52.25	3-14-23	G. W. Peckham
3-13-23	1263	City Nat'l	4,129.84	3-14-23	cr. a/c B. L. Fain
3-16-23	1267	City Nat'l	1,053.33	3-17-23	None
3-20-23	1272	City Nat'l	500.00	3-20-23	None
3-27-23	1276	B. L. Fain	7,550.00	3-27-23	B. L. Fain
3-31-23	1280	G. W. Peckham	500.00	4- 2-23	Geo. W. Peckham
4- 2-23	1281	City Nat'l	1,520.00	4- 2-23	None
4- 2-23	1282	City Nat'l	1,006.67	4- 2-23	None
4-10-23	1291	G. W. Peckham	2,516.67	4-10-23	G. W. Peckham
4- 9-23	1292	City Nat'l	1,520.00	4-10-23	None
4-13-23	1293	City Nat'l	5,000.00	4-14-23	None
4-14-23	1294	City Nat'l	10,000.00	4-14-23	None
4-19-23	1299	B. L. Fain	10,000.00	4-20-23	None
4-25-23	1302	W. H. Peckham	1,011.34	4-26-23	W. H. Peckham

Dated.	No.	Payee.	Amount.	Perforated.	Indorsement.
4-25-23	1303	B. L. Fain	1,526.66	4-26-23	B. L. Fain
4-27-23	1304	B. L. Fain	5,066.66	4-28-23	B. L. Fain
5- 1-23	1310	G. W. Peckham	500.00	5- 6-23	G. W. Peckham
5- 2-23	1314	City Nat'l	1,587.90	5- 2-23	None
5- 7-23	1319	B. L. Fain	1,258.33	5- 7-23	B. L. Fain
5- 8-23	1322	Geo. W. Peckham	400.00	5- 8-23	George W. Peckham
5-11-23	1325	Geo. W. Peckham	2,533.33	5-11-23	George W. Peckham
5-24-23	1333	Security Nat'l	5,100.00	5-25-23	For deposit to cr of B. L. Fain
6- 1-23	1339	G. W. Peckham	500.00	6- 2-23	G. W. Peckham

Mr. Rogers:

We offer in evidence the work sheet of Mr. Duncan, it is a schedule in connection with the income tax report of J. T. Harrell for the taxable year 1926, as prepared by Mr. Duncan, showing on the first page the income and deductions and net community gain, and I offer the instrument in evidence as Defendant's Exhibit D.

DEFENDANT'S EXHIBIT D.

Data
Income Tax Return
1926.

Memo.—J. T. H.

2107 Statement of Income and Deductions, 1926.

Income—		
Cowling sale profit		$6,944.24
Cowling interest received		1,167.57
Dividends received		4,599.34
Salary and Bonus received		7,875.00
Interest received		4,636.71
Sale of royalty—no cost		7,500.00
Payments in oil on prior sales—Verschoyle		1,305.09
Moore County lease profit on sales		3,565.00
Texhoma Oil & Refining Co. stock sale profit		7,448.83
Marlow and O'Neil tracts profit		10,052.80
Vernon oil runs	$1,110.75	
Less 27½% depletion	277.68	833.07
Green oil runs		215.21

McCarty oil runs		4,235.83	
Less:			
Operating expense	1165.89		
Depreciation	375.00	1,540.89	
		$2,694.94	
Less: Depletion at 27½%		1,164.84	1,530.10
			$57,672.96
Deductions—			
Seay lease loss		$1,965.77	
Marlborough loss		1,455.89	
Burlington forfeit		500.00	
Business auto expense		1,085.80	
Auto depreciation; on business car—9 mos. cost $1400.00—25%		262.50	
County and State taxes		695.66	
Attorney fees		490.00	
Interest paid		6,421.65	
Donations to M. E. Church-South		1,552.50	
Donations to Miscellaneous organizations		614.25	
Knight lease expense—dry		2,120.28	
Wilbern lease expense		530.53	
Continental Oil Co. stock loss		3,426.00	
Distributive share of loss from Rancho Vista Partnership		948.06	
Amortization New Mexico leases		45.20	
Cowling expense		559.15	
Salaries and labor		1,080.50	
X. Y. Z. loss		247.68	
Jarvis well expense		1,018.75	
Accounting		750.00	
Miscellaneous general expense and losses:			
Recording and revenue stamps	$49.00		
Abstracts	9.50		

New Mexico Rentals ...	33.47		
Mis. lease expense	176.69		
Mis. general expense ...	1097.50		
Mis. real estate expense	246.00		
Ford car loss	125.00		
German bonds loss	156.50		
Peckham-Okla. loss	87.50		
Burnett lease loss	675.02		
Palmer note loss	2000 00		
Crosby lease forfeit	190.63		
Harrell & Jones	860.99		
Seay lease note loss	40.00		
Seay lease note loss	25.00		
Seay lease note loss	21.62		
Business insurance	38.67		
Amortization Taylor lease	25.00		
Amortization Wheeler lease	14.22		
Repairs rent bldg.	72.85	5,945.17	31,715.34
Net Community Gain—1926			$25,927.62

2108 Memo—1926.

J. T. Harrell.

For further reference to the work sheets and data used in the preparation of 1926 returns have been assigned letters, as designated herein. Most of the detail was supplied by Mrs. Ward in the bound sheets labeled "A".

For convenience in checking the items appearing in tax return are amplified as follows:

Cowling sale profit, $6,944.24:

An analysis has been made of all sales as appearing on the annual statements from L. E. Cowling & Co. furnished Mr. Harrell under his Joint Venture with Mr. Cowling, and as in practically every instance it has been necessary for Mr. Cowling and Mr. Harrell to take

back second lien notes on the properties sold, covering installments agreed upon, with small initial payments received at the time of sale; the sales have been worked out on the installment basis, and profit reported is based thereon.

Work-sheet "B" shows cost of property, sale price, prior liens, vendee's obligation, percentage of profit to contract price, amount received in each of the taxable years 1925 and 1926, and the profit on each transaction in those years. This will also result in reducing the profit in 1925, which can be adjusted when the return is checked.

Cowling interest received, $1167.57:

This amount represents the amount of interest credited on the notes held by Mr. Harrell personally arising out of Cowling transactions, and the items of interest composing it are shown on work-sheet "B" opposite notes marked "H" as identifying those belonging to Mr. Harrell. Some of the notes are still held by the Company, and some notes belonging to Mr. Cowling are held by the City National Bank as collateral to Mr. Cowling's indebtedness to it.

Dividends received, $4599.34:

Dividends received, and their source, are set out in "A".

Salary and Bonus received, $7875.00:

Salary consists of a monthly salary of $625.00 for 12 months from the City National Bank, and a bonus of five percent of the annual salary; or $7500.00 plus $375.00.

Interest received, $4636.71:

Interest received, and from whom received, is set out in detail in "A". This amount of interest does not include any Cowling items.

Sale of Royalty, $7500.00:

The amount shown was received by Mr. Harrell as his interest in an over-riding royalty on production in Willbarger County. This royalty was sold to Barkley & Meadows by Mr. Harrell and Mr. Basham, and as all costs have been previously claimed the entire amount is returned as profit. Art. 216 (e) Reg. 69 should be kept in mind pending definite determination by the Board of Tax Appeals as to its proper application.

Payments in oil—Verschoyle, $1305.09:

These payments in oil only were received on account of sale made in 1923, and the entire amount now received is to be returned as income.

Moore County Lease sales, $3565.00:

On June 3, 1926, Mr. Harrell purchased for $2500.00 an interest in leases aggregating 1600 acres on the W. H. Taylor ranch in Moore County. During 1926 1440 acres, or 90% of the acreage was sold, leaving 160 acres retained. As his share of acreage sales, Mr. Harrell received the following amounts:

Aug. 16, 1926	$1440.00
Dec. 3, 1926	4375.00
	$3815.00
Less Cost: 90% of $2500.00	2250.00
Net gain on sales	$3565.00

Texhoma Oil & Refining Co. Stock sale, $7448.83:

Profit on sale of this stock was determined as follows:

Sales Price:	
Feb. 5, 1926 "A"	$ 9,060.00
Aug. 2, 1926 "A"	9,060.00
	$18,120.00

Less Cost:		
Checks given for Texhoma stock,		
1923: (March)	$26,550.69	
	4,916.65	
	$31,467.34	
Less E. H. Eddleman ½	15,733.67	
	15,733.67	
Less Cost taken on 1923 sale ...	5,062.50	10,671.17
		$7,448.83

Marlow and O'Neil tracts profit, $10,052.80:

These two tracts of acreage adjoining the City were sold by Mr. Harrell to Mr. Carruthers, taking his notes on which Mr. Carruthers made various payments through the year aggregating $17,252.80.

Owing to the fact *the* the properties had prior lien encumbrance, the notes not having a fair market value equal to the amount of them, and practically all payments except a small amount being received by Mr. Harrell in 1926, the cost to Mr. Harrell of $5000.00 on one tract and $2200.00 on the other, being the amount of cash put in by him, has been used in 1926 against the total receipts from Carruthers of $17,252.80, as shown in "C". Any remaining balance due from Carruthers will be taken up in 1927 as income when paid. It is believed that this method will approximate the same profit as would be determined by using the basis of the fair market value of the Carruthers paper.

Vernon oil runs, $1,110.75:

These oil runs include a few minor gas sales that may be other than Vernon sales, but the amount of them is small; and inasmuch as there was no operating expense to limit depletion, their inclusion here would not affect the tax basis. "C".

Green oil runs, $215.21. "C":

No depletion claimed. See expense on Wilbern lease "A".

McCarty oil runs, $1,530.10:

Oil runs received by Mr. Harrell aggregate $4235.83 under his interest. In addition there was paid to him the runs due Mrs. Lansing et al on McCarty and Dodson leases, out of which Mr. Harrell returned to Mrs. Laning $1000.00 per month in 1926 for her use in operating the leases and the balance of the amounts received by Harrell under Mrs. Laning's interest was applied by him on her indebtedness to him. Mr. Harrell's share of operating expense for his own interest is set out under "Lease—McCarty" ("A") as $594.59, plus the amount paid by him to Mrs. R. A. Laning in excess of $1000.00 per month, as shown in her account. This excess amounted to $1165.89, and with the $594.59 referred to above accounts for the total of $1760.48 operating expense, which amount should be used in lieu of $1165.89 operating expense McCarty lease shown in return, with a resultant decrease in income of $365.26. (Full additional $594.59 cannot be gained account 50% depletion limitation.)

Deductions.

Seay Lease loss, $1,965.77:

The loss taken is the depreciated cost of equipment. The equipment costs are shown in work-sheets for 1924, and depreciation sustained is shown in 1924 return, and in 1925 return:

Cost of equipment, 1924		$3,145.25
Deprn. 1924	$393.16	
Deprn. 1925	786.32	1,179.48
Loss—Depreciated cost		$1,965.77

(No cost for lease—hence no depletion sustained on cost.)

Marlborough loss, $1,455.89:

The Marlborough loss is shown in detail in work-sheets "D", including profit on the sale of approximately 40 lots on the installment basis. Details were secured from the office of Mr. G. W. Peckham who is in charge of the property and sales of lots and costs thereof were worked out in full detail to arrive at the correct profit on installment sales. Included in the operating expense is depreciation taken, which has been claimed subject to adjustment.

Burlington forfeit, $500.00:

Mr. Harreli paid $500.00 for an option on property in Burlington, Iowa, which option was not exercised, and the amount paid, $500,00, was forfeited and resulted in a loss of that amount to Mr. Harrell.

Business auto expense, $1085.80:

The total automobile expense of Mr. Harrell, as shown under that heading in "A" for 1926 was $3752.15. Included in this amount was $2150.00 as part of the purchase price of two automobiles from Munger Auto Co. The balance of the auto expense has been allocated on the basis of 2/3, $1068.10, to business expense and 1/3, $534.05, to personal expense. This is believed to truly reflect the actual proportion of expense on this account. In addition to the $1602.15, there is included a license of $17.70 in Paul's account.

Auto depreciation, $262.50:

Depreciation is claimed for nine months at 25% on a business car owned by Mr. Harrell purchased at a cost of $1400 from Munger Auto Company. In addition to this business car Mr. Harrell has a pleasure car, and therefore full depreciation has been claimed on business car.

County and State taxes, $695.66:

Only County and State taxes for which checks were paid by the bank during the year 1926 are included in this

amount, and checks given in 1926, (Dec.) which were paid by the bank in Jan., 1927, will be claimed as 1927 deductions. This is in conformity with prior practice of adhering strictly to actual cash receipts and disbursements during the year reflected in the bank account. "A".

Attorney fees, $490.00:
This item appears in detail in "A".

Interest paid, $6,421.65:
The amount of interest paid shown under "Bills Payable" in "A" of $6411.48 has been increased by $10.17 as the amount of interest paid on income tax installments, shown under the heading "taxes"—"A". This amount of interest paid does not include the amount of interest on Marlborough tract included in the check for $4797.87 to Highland Irrigation Co. shown under "Real Estate." This item of interest appears in "Interest paid" in the Marlborough statement ("D").

Donations, $2166.75:
Donations are set out in detail under that heading in "Donations" "A" and aggregate $2211.75, from which the following items have been deducted as unallowable for tax purposes:

Mrs. Cain fund	$10.00	
Hutchins-Bird man	10.00	
Anti-Saloon League	15.00	
Berachah home Entertainment (x)	10.00	$45.00

(x) Donations to Berachah Home are allowable deductions ordinarily, but being for an entertainment might make it subject to objection, and therefore it has not been claimed.

Knight lease expense—dry, $2,120.28:
The items making up this amount are shown under "Lease—Eagle Creek—W. T. Knight" ("A"). Item of

$320.84 has been excluded as being a payment on note given for purchase of Porter Fee, and the interest item of $220.98 is included in interest paid under—"Bills Payable." It is also a Porter fee item, but allowable as a deduction.

Wilbern Lease expense, $530.53:

This item shown in detail under "Lease-Wilbern" (A).

Continental Oil Company stock loss, $3,426.00:

On Feb. 2nd Mr. Harrell gave check for $5,000.00 to R. O. Harvey for the purchase of Continental Oil Company stock and on the sale of the stock received $1324.00 in March and $250.00 in April; the difference of $3426.00 being a loss.

Rancho Vista loss, $948.06:

Distributive shares per Partnership report.

Amortization of New Mexico leases, $45.20:

Cost of New Mexico leases, $226.00 (See 1924 worksheets) Purchased with G. W. Peckham. For lack of complete information as to dates, a five-year term has been assumed and one-fifth of the cost, $226.00, claimed as an amortization deduction for 1926.

Cowling expense, $559.15:

This amount represents one-half of the excess of expense over miscellaneous income shown in Cowling statement for the year 1926. (Profit from sales is reflected herein through "Cowling sale profit.")

Salaries and labor, $1,080.50:

This amount represents the labor expense or maintenance cost on suburban acres (15 A) acquired by Mr. Harrell in North Morningside. The other acreage interests of Mr. Harrell are reflected in "Marlborough loss" and "Ranch Vista" Partnership.

X. Y. Z. loss, $247.68:

This loss is shown in detail in statement furnished Mr. Harrell by Maer-Staniforth, and incorporated in 1926 work-papers. The loss is largely through lapsed leases.

Jarvis well expense, $1,018.75:

This item represents Mr. Harrell's share of expense of drilling a dry hole, and the amount is set out in detail in "Lease-Panhandle" (A).

Accounting, $750.00:

Payment to A. F. Bowden on Dec. 3, 1926, as shown in "Miscellaneous-December" (A).

Miscellaneous general expense and losses, $5,945.17:

This total of $5,945.17 is composed of the following items:

Recording and Revenue (A)	$49.01
Abstracts (A)	9.50
New Mexico rentals (Lease N. M. "A")	33.47
Miscellaneous lease expense—Note 1	176.69
Miscellaneous general expense—Note 2	1097.50
Miscellaneous real estate expense—Note 3	246.00
Ford car loss—Note 4	125.00
German bonds expense—Note 5	156.50
Peckham Oklahoma loss—Note 6	87.50
Burnett lease loss—Note 7	675.02
Palmer note loss—Note 8	2000.00
Crosby lease forfeit—Note 9	190.63
Harrell & Jones—Note 10	860.99
Seay lease note loss—Note 11	40.00
Seay lease note loss—Note 11	25.00
Seay lease note loss—Note 11	21.62
Business insurance—Note 12	38.67
Amortization Taylor lease—Note 13	25.00
Amortization Wheeler lease—Note 14	14.22
Repairs—Note 15	72.85
	$5945.17

Note: 1 to 15 noted above appear on the following page, in explanation.

Note 1, $176.69:

Lease—McClatchey (A)	$80.00	
Lease—McClatchey (A)	75.00	
Leases—Miscellaneous (A)	8.34	
Lease—Joe Ostean (A)	13.35	$176.69

Note 2, $1097.50:

See "Miscellaneous-December" (A) for re-cap. of items composing this amount, and which have been checked and carried to inside column on the "Miscellaneous" pages from January to December inclusive. The principal item is $250.00 Chamber of Commerce dues, with other minor business expenses in smaller amounts.

Note 3, $246.00:

These deductions are shown in detail under "Real Estate" "A" as expense items in connection with real estate owned.

Note 4, $125.00:

In 1924 Mr. Harrell purchased a Ford car for $200.00, (refer to 1924 work-sheets). The car has been worn out and loss is now claimed as follows:

Cost		$200.00	
Less:			
Deprn. 1924 25% for 6 mos.	$25.00		
Deprn. 1925 25%—1 yr.	50.00	75.00	$125.00

In re-checking 1924 and 1925 this depreciation shown should be taken as additional deductions. The loss probably should be 1925 instead of 1926, in which case the depreciated cost, and loss, would be $175.00.

Note 5, $156.50:

Cost of German bonds, as shown in work-sheets for 1924. Loss may be in 1924 or 1925, but is now claimed for 1926; and should be allowed in one of the three years.

Note 6, $87.50:

In June, 1926, Mr. Harrell took an interest with W. H. Peckham in a drilling proposition in Oklahoma, for which Mr. Harrell paid $1600 as shown in "Leases-Oklahoma" (A). Various sales were made and the transaction closed with the receipt by Mr. Harrell of the following amounts:

July 30	$681.25	
Sept. 30	481.25	
Oct. 1	200.00	
Dec. 4	150.00	$1512.50

Credits appear as deposits in "A", and shown under lease sales in work-sheet "C".

Note 7, $675.02:

The Burnett Lease—Silk, Bullington & Clark—oil runs are detailed in work-sheet "C" under "Panhandle oil runs —Amarillo district" and total $2,761.12. Distributive share of operating expense for Mr. Harrell, including depreciation, is shown to be $3,436.14 in statement from office of W. W. Silk accompanying work-sheets ("E"). Operating expense exceeds income and depletion at 27½% is not allowable. Data for depletion on cost is not available, but would be small deduction.

Note 8, $2000.00:

Note of A. W. Palmer for $2000.00 dated in 1925 and due in six months is a loss on account of maker having become entirely insolvent and collection impossible.

Note 9, $190.63:

This represents tax-payer's interest in amount of forfeit on account of Crosby lease, and shown in detail under "Lease-Panhandle." (A).

Note 10, $860.99:

Mr. Harrell sustained one-half of loss and expense of $1721.99 shown in the Harrell & Jones statement "F" with work-sheets. Sales from property owned under this Joint Venture will likely be upon installment basis, and be reflected in 1927 returns.

Note 11, $40.00; # $25.00; # $21.62:

Certain small notes were outstanding for the Seay Lease and were paid by Mr. Harrell, and are a loss to him. These notes appear in "Bills Payable" (A), and are in addition to loss on Seay Equipment shown elsewhere.

Note 12, $38.67:

Business insurance on residence (rental property) at 1607-14th St. See "Insurance-Property" (A). This property was acquired in exchange for other real estate, and traded; and gain or loss will be shown for tax purposes when finally determined.

Note 13, $25.00:

Amortization of Taylor Lease "Lease-Panhandle-Moore County" (A). (See Moore County Lease Profit above.)

Mr. Harrell's cost of the interest in acreage retained (160 acres out of 1600) was $250.00, or 1/10th of his investment of $2500.00. Without definite data, a 5 year lease is assumed, and remaining cost amortized for six months.

Note 14, $14.22:

Amortization of Wheeler County Lease "Lease-Wheeler County" (A). Mr. Harrell's cost was $142.22 and same

basis as on Taylor lease was used for amortization; 5 year term—half year in 1926.

Note 15, $72.85:

Repairs of $72.85 are on rental property at 1607 14th St., and are to be found in "Real Estate" (A).

Comment.

Certain payments received from G. W. Peckham, and detailed in work-sheet "C" are in connection with the sale of Vernon Lease for which notes were taken. These payments are properly 1925 income, with the exception of interest on them received in 1926, and should be included in 1925 in re-checking or in the filing of an amended return. The notes were not dependent on the oil being produced, but were made without restriction, and should have been included in 1925 income to the amount of their fair market value.

As heretofore noted, the Cowling sales profits for 1925 and 1926 computed as shown will reduce the Cowling profit in 1925 to the amount shown in work-sheet "B"—(1926)

Seay lease loss is properly taken in 1926, but the cost of Morgan lease in sale in 1925 should be increased by the depleted cost of Lanier lease, which was included in the transaction.

In Deposits for August 1926 will appear one for $1475.00 from J. A. Kemp for 10 shares of bank stock. This stock was sold to Mr. Kemp at cost, and was a part of the stock purchased by Mr. Harrell on August 2nd—23 shares for $3392.50, as shown in "Stocks and Bonds" (A). A similar transaction appears in November, Mr. Kemp paying $2030.00 for 14 shares of stock, or one-half of the stock purchased by Mr. Harrell from Mr. G. W. Peckham. There is a slight variation of $70.00 between this amount and $1960.00, one-half of the purchase price of $3920.00 from Peckham; but as the intention was to assign the stock at cost, it is assumed that the $70.00 was some outside item and has not been taken up as income.

On Nov. 10th Mr. Harrell purchased a royalty interest from G. W. Peckham for $1000.00 as shown in "Lease-Wheeler County" (A) and on Nov. 12th sold a half interest to C. E. Basham at cost, received $500.00 which appears as deposit of Nov. 12th.

It is believed that a complete and thorough search of files and records would disclose that Mr. Harrell is entitled to more deductions for lapsed leases in the period 1924-1925- and 1926 than he has claimed.

RHK.

2111 Mr. Rogers:

In the absence of an agreement, I would like to offer in evidence the pleadings filed by the bank, after the remanding of the case by the Supreme Court, to show you discontinued as an indorsement on the thirteen thousand dollars, and that there was no suit pending upon that until in December, 1936.

Mr. Humphrey:

I will agree to that.

Mr. Rogers:

Now, if Your Honor please, it may be of some importance as to the law of the case, and the respective contentions about it for the record to show affirmatively what the status of this case was in so far as the pleadings are concerned, upon which the bank and Mr. Harrell went to trial in the State Court. I would assume, although I do not know that the Court will take judicial knowledge of it, but I want to tender and offer in evidence the first amended original petition of the City National Bank against the Wichita Royalty Company in cause No. 24.-549-B, in the 78th District Court of Wichita County, Texas, filed December 31, 1930, and marked "Defendant's Exhibit E" as follows:

DEFENDANT'S EXHIBIT E.

In the District Court of Wichita County, Texas, for the 78th Judicial District, December Term A. D. 1930.

City National Bank of Wichita Falls, Texas,
vs. No. 24549-B.
Wichita Royalty Company, et al.

To the Honorable W. W. Cook, Judge of said Court:

Comes the City National Bank of Wichita Falls,
2112 Texas, plaintiff in the above entitled and numbered cause and with leave of the Court first had and obtained, files this its First Amended Original Petition in lieu of and as a complete substitute for its Original Petition heretofore filed, and for such amended petition pleads as follows:

I.

The City National Bank of Wichita Falls, Texas, a corporation, organized and existing under the laws of the United States as a national banking association, with its office and place of business in Wichita County, Texas, hereinafter styled plaintiff, complaining of the Wichita Royalty Company, a common law trust, whose sole trustee is E. E. Scannell, who resides in Wichita County, Texas, and complaining of E. E. Scannell, individually and as trustee also, a resident of Wichita County, Texas, hereinafter styled defendants, presents to the Court as follows:

II.

That the Wichita Royalty Company is a common law trust estate, operating under a Declaration of Trust, recorded in the Deed Records of Wichita County, Texas, Volume 168, pages 56 and 58, and that E. E. Scannell is its sole trustee, duly appointed and qualified as such, and

is a resident citizen of Wichita County, Texas, and has sole authority and power to manage, control and liquidate said trust.

2113 III.

That trust has been engaged in the general business of buying and selling lands, oil properties, mineral rights and royalties, as evidenced by the powers set forth in the Declaration of Trust, aforesaid, and that said Declaration of Trust specifically provides, among other things, that the assets and properties are charged with all of the debts and obligations of said trust estate.

That said trust has been generally engaged in the purchase of royalties, stocks and bonds, real estate and is now the owner of certain oil lands and interests and royalties, a full complete, detailed and itemized list thereof being hereto attached, marked Exhibit "A" and made a part of this petition, and here referred to for all purposes.

That in addition to said properties, the said defendant is the owner of one-half of the capital stock of the Texas Investment Company amounting to 325 shares, which is a corporation duly incorporated under the laws of the State of Texas.

IV.

That on the 26th day of June, 1930, the defendant, E. E. Scannell, as sole trustee for the Wichita Royalty Company, and for a valuable consideration made, executed and delivered to the plaintiff a certain promissory note in the principal sum of $22,000.00, due sixty days after date and payable to the order of the plaintiff with interest from date until paid at the rate of 8% per annum, which note further provides for 10% attorney's fees
2114 if sued upon or placed in the hands of an attorney for collection, which note is a renewal

and extension of an indebtedness owing by defendants to the plaintiff herein for money borrowed by said defendants in the due and regular course of business, and is a renewal and extension of the notes for which the deeds of trust hereinafter set forth are given as security.

V.

That to secure the payment of said note, and all renewals and extensions thereof, the defendants made, executed and delivered to J. T. Harrell, Trustee a Deed of Trust, dated July 24, A. D. 1925, upon the following described lands and premises, to-wit:

Full over-riding royalty covering 40 acres, Lot No. 4, of the South 100 acres, Sarah Tankersley Survey, Abstract No. 278, recorded in Vol. 84, pages 254-6 Deed Records of Young County, Texas;

9/32 of 1/8 fee royalty in 160 acres, known as R. D. Owen Survey, Abst. 2245, and being known as BRIR Survey, No. 38, and the same having been patented to R. D. Owen, October 20, 1919, and said patent duly recorded in Volume 80, page 249, of Deed Records of Young County, Texas;

1/8 of the 1/8 fee royalty in 80 acres known as the south half of the J. A. Harkness Survey, Abstract 1442, and patented to Albert Owen, Patent No. .... and which is recorded in Volume 2, page 537 of the Deed Records of Young County, Texas;

2115 1/8 of the 1/8 fee royalty in south 80 acres, G. L. Aynesworth Survey BRIR No. 49, Abst. 1948, patented to J. A. Driver, Assignee, dated Aug. 13, 1913, Patent No. 3, Volume 47, Young County, Texas;

1/16 of 1/8 fee royalty in 50 acre tract, known as a part of the Pedro-Varela XI League Grant, recorded in deed

Records of Limestone County, Volume 140, page 617, known as Ellis Tract, Mexia, Texas.

Which deed of trust was duly filed for record in the Counties where said lands were situated, and is a valid lien upon said lands and premises above described.

VI.

The plaintiff further alleges that on the 9th of June, 1930, The Texas Investment Company, a corporation, by and thru E. E. Scannell, its president, and J. Will Gray, its treasurer, made, executed and delivered to plaintiff its promissory note in the sum of $43,000.00, due on demand, bearing interest from date until paid at the rate of 8%, providing for attorneys' fees if sued upon or placed in the hands of attorneys for collection, or collected thru the Probate Court. That as collateral to secure said note there was pledged under writter. pledge with said bank 650 shares of the stock of the Texas Investment Company, a corporation, and notes and accounts receivable of the aggregate amount of $35,000.00, which note was indorsed by the Wichita Royalty Company
2116 by E. E. Scannell, Trustee, by J. T. Harrell and J. A. Kemp.

VII.

That the assets pledged to secure said note have been sold in accordance with the terms of said note and that said note is entitled to the following credits for monies paid and for the sale of said assets; 8-20-30. $700.00; 9-17-30, $300.00; 10-2-30, $300.00; 12-29-30, credit for collateral sold $20,000.00, leaving a balance due on said note in the sum of $29,192.00, including interest and attorneys' fees, said note having been placed in the hands of attorneys for collection prior to December 29, 1930. That the relative liability of indorsers on said note for such deficiency was

one-half to Wichita Royalty Company and one-half to J. T. Harrell and J. A. Kemp jointly; that the Texas Investment Company's entire assets were pledged and said note cannot be collected from the principal, the plaintiff having already exhausted the assets of the principal. Therefore, the defendants, Wichita Royalty Company and E. E. Scannell, are now indebted to the plaintiff in the sum of Fourteen Thousand Five Hundred Ninety-Six & no/100 Dollars ($14,596.00), being one-half of said deficiency.

VIII.

That said notes are past due and unpaid and the defendants, though often requested, have failed to pay the same or any part thereof, and the plaintiff has placed said notes in the hands of its attorneys and has agreed to pay said attorney's 10% of the principal and interest, which is the usual and customary charge and is reasonable.

2117

IX.

That under the terms of the Declaration of Trust, the creditors of the Wichita Royalty Company, including this creditor have an equitable lien upon all the property and assets of said estate and this plaintiff has a valid and subsisting lien upon the properties described in the mortgages and deed of trust herein above set out and also all of the other property and assets of the defendant, Wichita Royalty Company.

X.

That said defendants, the Wichita Royalty Company and E. E. Scannell, sole trustee, do not have sufficient assets to pay said indebtedness in the ordinary course of business, and cannot realize or will within a reasonable length of time realize sufficient assets with which to pay its obligations, and is in an insolvent condition.

XI.

That its properties are producing oil properties, and are being depleted, that is to say, that oil is being produced therefrom and said properties are being depleted, and said properties and assets, as well as the Wichita Royalty Company should be placed in the hands of a receiver to take charge of, conserve the same, and liquidate the indebtedness pending this litigation; that said
2118 receiver is necessary for the reason that said Wichita Royalty Company is insolvent, or is at least threatened with insolvency, and that the said defendant has no ready assets with which to pay its obligations. That E. E. Scannell has been in charge of the books and records of said Royalty Company since its creation, and is a shareholder and trustee and is liable personally along with the Wichita Royalty Company for this indebtedness, and is refusing to apply the proceeds of the oil produced from said properties to the liquidation of this indebtedness.

Wherefore, Premises Considered, citation having been served on the defendants, the plaintiff prays for the appointment of a Receiver to take charge of, administer, conserve the assets and collect the proceeds thereof, pending this litigation for a judgment against the defendants for the amount of the plaintiff's debt, interest, attorney's fees and costs of suit, for the fixing and establishment of a lien upon all of the assets of said defendant, for the satisfaction of this judgment, and for a sale of said properties under the order of this Court, and an application of the proceeds thereof to the payment and satisfaction of the indebtedness herein sued for, and such other indebtedness as may be owing by said defendant. Plaintiff further prays for costs of suit, and for general relief.

BULLINGTON, HUMPHREY & KING,
Attorneys for Plaintiff.

2119 Mr. Rogers:

Also the answer of the same bank to the cross action filed against it on February 14, 1931, by the City National Bank, which was filed April 18, 1931, Defendant's Exhibit F.

(Marked "Defendant's Exhibit F" as follows:)

DEFENDANT'S EXHIBIT F.

In the 78th District Court of Wichita County, Texas.

The City National Bank of Wichita Falls, Texas.
vs. No. 24549-B.
Wichita Royalty Company, et al.

Subject to the pleas in abatement heretofore filed and only in the event such pleadings be overruled, comes now the plaintiff, the City National Bank of Wichita Falls, Texas, and answers the cross action of the defendant, Wichita Royalty Company, as follows:

I.

This plaintiff excepts to said answer and cross action and says that the same is insufficient to entitle said defendant to any recovery herein against this plaintiff, and of this it prays judgment of the Court.

II.

This plaintiff excepts to Paragraph Five of said cross action wherein it alleges that J. T. Harrell was a partner and associate of G. W. Peckham, for the reason
2120 that any knowledge acquired by J. T. Harrell by reason of his being a partner with G. W. Peckham would not be imputable to the plaintiff bank, and of this it prays judgment of the Court.

III.

This plaintiff further specially excepts to that portion of Paragraph Five of the defendant, Wichita Royalty Company's pleadings where it alleges that J. T. Harrell and others whose names it is not material to allege were from time to time jointly interested in the purchase for mutual profit of interest in the oil and gas properties and the sale thereof, constituting inter se se a partnership, etc., because of a partnership inter se se this plaintiff is not apprised of who constituted this partnership, as the names of the parties are not alleged other than J. T. Harrell.

IIIa.

The plaintiff, City National Bank, further excepts to the cross action of the defendant, Wichita Royalty Company, in this, to-wit: Said cross action shows that the Wichita Royalty Company is a joint stock association operating under a declaration of trust and E. E. Scannell is its trustee, and said cross action joins said trustee with some Thirteen Hundred (1300) stockholders, and that stockholders are not necessary or proper parties to said cross action.

That said cross action shows that it is a suit by the trustee, and that said trustee has full power and authority to prosecute any cause of action; that the stock-
2121 holders are not necessary or proper parties and are in fact without capacity to sue upon this claim, in that it is no where shown that the trustee is unwilling to file such a suit, or in any way incapacitated to file the same.

Wherefore, this plaintiff prays judgment of the Court as to the sufficiency of said petition in said respect.

Therefore, the plaintiff excepts to said pleadings because of the failure to name the other parties constituting said partnership, and of this it prays judgment of the Court.

IV.

This plaintiff excepts to said petition wherein it alleges that "E. E. Scannell, Trustee, one of some 1300 stockholders of this company herein, called cross complainants", for the reason that said petition does not name the other 1300 stockholders or the respective residences and citizenship, and the plaintiff would be entitled to know the personnel of said complainant defendants and their respective residences, in that the plaintiff would be entitled under the articles of association to judgment against said shareholders individually. Wherefore, this plaintiff prays judgment of the Court as to the sufficiency of said exception and to require the said defendant to set out the respective names and residences of the shareholders.

V.

This plaintiff excepts to all of the allegations in said answer wherein it alleges that said J. T. Harrell
2122 was an associate and partner of G. W. Peckham, for the reason that in the event of any adverse interest or association of the partnership relation existing between J. T. Harrell and G. W. Peckham, the plaintiff would not be bound or obligated by the statements of said officer, and of this it prays judgment of the Court.

VI.

This plaintiff further specially excepts to that portion of Paragraph Six of the Wichita Royalty Company's answer, wherein they allege that the said J. T. Harrell knew, "as did all other officers and/or agents of plaintiff bank having anything to do with the transactions

hereinafter set forth", because said allegation does not name the other officers of said City National Bank, and does not apprise it of what officer or officers the said defendant, Wichita Royalty Company, is directing its answer to, and of this it prays judgment of the Court.

VII.

Further excepting to said amended answer and cross action, this plaintiff says that the same shows upon its face an improper joinder of parties defendant, to-wit: a joinder of J. T. Harrell with the City National Bank upon causes of action in no wise connected or related to each other, and of this exception it prays judgment of the Court.

And for answer herein, if same be necessary, without waiving its pleas in abatement or either of them, and without waiving its general demurrer and without waiving its special demurrers or any of them, and subject to the Court overruling each and both of the pleas in abatement and subject to the Court overruling this general demurrer and each and all of the special demurrers, comes now the plaintiff, the City National Bank, and denies each and every allegation set forth in the defendant, Wichita Royalty Company's second amended original answer, and of this it puts itself upon the country.

2123

And for special answer herein, without waiving any of the foregoing proceedings and subject only to a requirement for answer herein to the merits, this plaintiff, City National Bank, in special answer therein to the second original amended answer of the defendant, Wichita Royalty Company, says:

I.

That heretofore to-wit; about the 1st day of June, A. D. 1920, R. R. Robertson by a declaration of trust created what is known as the Wichita Royalty Company by

certain articles of association and agreement, duly subscribed and acknowledged by the said R. R. Robertson, and filed for record August 27, A. D. 1920, in the office of the County Clerk of Wichita County, Texas, in Volume I, page 56 of the Deed Records of Wichita County, Texas, to which reference is here made. By virtue of said articles of agreement and declaration of trust the complete and exclusive affairs of said company were vested in the trustee free of the control of the stockholders. That said declaration of trust, among other things, provided the following:

2124 "The entire affairs of this trust shall be managed by one trustee, who shall own at least one certificate of membership for not less than one share. The trustee may from time to time hire suitable officers for the transaction of the business of this trust; and he may appoint, remove or reappoint such officers, agents and other assistants as he may think best ....."

"The trustee shall have full and exclusive power and authority to conduct the business and affairs of this trust, to purchase, contract for, lease or otherwise acquire, any property necessary or proper for the purpose of the trust; to sell and convey all or any part of the property of the trust; to borrow money on the credit of the trust; and if he deems advisable, to execute notes therefor secured by a mortgage or deed of trust upon the property of the company, and generally to do all things which in his judgment is necessary and prudent in the management and conduct of the business of the company....."

2125 Said R. R. Robertson conducted the affairs of said association until he resigned on the 2nd day of January, A. D. 1923, which resignation was filed for record on January 8, A. D. 1923, and under the terms of said declaration of trust G. W. Peckham was appointed as trustee to succeed R. R. Robertson, said appointment being made by the District Court for the 30th Judicial

District of Texas in conformity with and pursuant to the articles of the association heretofore referred to. That after said G. W. Peckham had succeeded as trustee for the Wichita Royalty Company he was clothed and vested with the sole and exclusive management and control of said business, and conducted the business of said trust from his qualification and acceptance up until his death in the fall of 1929, and was the sole trustee, having full power and authority to conduct the affairs of said trust at all times complained of in the said defendant's cross complaint herein.

II.

That said G. W. Peckham had full and complete authority to draw checks upon the funds belonging to said association, and to make application of funds, and the plaintiff bank had no higher authority to appeal to in determining the proper application of the funds than G. W. Peckham, who was the sole trustee and in complete charge of the management of the affairs of said enterprise. That said G. W. Peckham's authority was free from the control of the shareholders of said association,
2126 as said shareholders had no legal right to the trust property or funds held or maintained by said trustee, and that said shareholders at all times knew of the appointment of G. W. Peckham as trustee and consented to his appointment and continuation by him of the management of said properties.

III.

That during all of the times herein complained of the said G. W. Peckham purchased properties for the defendant, Wichita Royalty Company, sometimes taking the title in his own name and sometimes in the name of the Wichita Royalty Company, sometimes carrying the funds in his own name and sometimes in the name of the Wichita Royalty Company, and transferring properties in his own name to the Wichita Royalty Company and funds in his own name to the account of the Wichita Royalty Com-

pany, and likewise transferring funds from the Wichita Royalty Company to funds in his own name; that such was his course of dealing and management of the affairs of said company, and it was known to the company and to its stockholders or by the use of ordinary diligence could have been known to said shareholders, as said records and books fully disclose these transactions, which records were at all times available and accessible to the shareholders, and by reason thereof all acts, conduct and transactions of the said G. W. Peckham as trustee were in fact and in truth known to the Wichita Royalty Company.

2127 IV.

That the said G. W. Peckham, as alleged in the plaintiff's first amended original petition, executed his promissory note to the plaintiff bank in the principal sum of Twenty-Two Thousand & No/100 ($22,000.00) Dollars, which represented funds borrowed by said Wichita Royalty Company and G. W. Peckham, trustee, from said plaintiff bank, which funds were subsequently expended by G. W. Peckham acting as sole trustee of said company; that said note had from time to time been renewed and extended by G. W. Peckham during his lifetime, and after his death E. E. Scannell, the defendant trustee herein, was duly appointed to succeed G. W. Peckham and accepted the said appointment and continued as trustee for the Wichita Royalty Company, and after his appointment the said E. E. Scannell from time to time paid the interest on said note and made payments thereon and renewed the same on many different occasions, executing renewals of said note with full and complete knowledge of all the transactions herein above complained of by the said defendant, Wichita Royalty Company, and received the benefits from said extensions and renewals; the said E. E. Scannell having been for many years an employee of the Wichita Royalty Company and being cognizant of all the facts plead herein by the defendant, Wichita Roy-

alty Company, at the date of said respective renewals, and is, therefore, now estopped to deny the validity of said note, or the alleged payment or conversion of funds by reason of the transactions herein plead by the defendant, Wichita Royalty Company.

2128 V.

That in the fall of 1925, G. W. Peckham and W. H. Peckham negotiated for the purchase of a tract of land adjacent to the City of Wichita Falls known as the Marlborough Addition, and induced the interpleaded defendant, J. T. Harrell, J. A. Kemp to join them in said purchase. That after the purchase of said property G. W. Peckham acquired the interest of W. H. Peckham, and thereafter sold and conveyed the interest he acquired from W. H. Peckham and the interest owned by him individually to the Wichita Royalty Company, which sale and transfer was made in the early part of 1926. The book and records of the Wichita Royalty Company, which were accessible to the stockholders and known to the present trustee, reflected said transactions. That thereafter one-half of the interest in the assets of the Marlborough Addition were carried upon the books of the Wichita Royalty Company as belonging to said company, and said company acting thru G. W. Peckham as sole trustee expended funds of said Wichita Royalty Company for the purchase and payment of its interest in said property and in the development and improvement thereof, each and all of which transactions were reflected by the books and records of said company and were accessible to and available to all of the shareholders of said company, and were well known to the present trustee who brings this cross action.

2129 VI.

That the said Marlborough Addition acting by and thru G. W. Peckham and the other co-partners borrowed from

the City National Bank the sum of approximately Forty Thousand & No/100 ($40,000.00) Dollars, evidenced by a note of the said Marlborough Addition, and indorsed and guaranteed by the said co-partners. That said G. W. Peckham, as well as W. H. Peckham, did not advise or inform the other remaining co-partners of their sale of their interest in said co-partnership properties to the Wichita Royalty Company, but permitted said properties to remain in the name of G. W. Peckham, who was holding the same as trustee for the Wichita Royalty Company and which fact was known only to the Wichita Royalty Company and its agents, but the expenditures of money for the improvement and development of said addition as well as the purchase price was fully reflected by the books and records of said company and was well known to the present trustee.

VII.

That shortly before the death of G. W. Peckham said co-partnership was incorporated under the name of the Texas Investment Company, that the corporation was perfected after the death of G. W. Peckham and after the present trustee was appointed. On the 24th of January, 1930, there was a stockholders' meeting, in which E. E. Scannell, trustee, was present and informed the other co-partners that the Wichita Royalty Company owned a one-half interest in said addition or partnership and
2130 was entitled to one-half of the capital stock thereof. Thereupon, on said date the capital stock was issued and one-half of the capital stock was delivered to and accepted by said trustee for the use and benefit of the Wichita Royalty Company. That the said E. E. Scannell was elected president of said corporation; that he signed the certificates of stock, called the meetings of the stockholders, a board of directors was elected, and the Wichita Royalty Company accepted the benefits of said enterprise and the benefits of the ownership of said stock, and the books and records of said Wichita Roy-

alty Company fully reflected all of said facts and they were known to the shareholders of said Wichita Royalty Company, or could have been known by the use of ordinary diligence.

VIII.

That when it was ascertained by the remaining shareholders and partners of the Marlborough Addition that G. W. Peckham had acquired for the Wichita Royalty Company a one-half interest in the properties of said co-partnership, and the said plaintiff bank permitted the administrator of the estate of G. W. Peckham to be relieved from his indorsement and guarantee upon the obligations of the Texas Investment Company, accepted in lieu thereof the indorsement and guarantee of the Wichita Royalty Company, and that the said Wichita Royalty Company by reason of its ownership of one-half of the capital stock and of the guarantee and indorsement of the
2131 obligations owing by said corporation to the plaintiff bank herein, thereafter made payments on said obligation, and the records and books of said Wichita Royalty Company show payments thereon, all of which payments were made with the full knowledge of the present trustee and imputed knowledge to the shareholders by virtue of the fact that the said trustee was the sole and exclusive manager of said properties and all rights incident thereto and not subject to the control of the shareholders.

IX.

This plaintiff further pleads herein as follows: That it is an old established banking institution, having operated a bank for some forty years, and has built up a large banking business over Northwest Texas, and was doing a large banking business during the times complained of by the Wichita Royalty Company. That at and during said period of time it had in excess of six thousand in-

dividual depositors, and had total gross deposits ranging from nine to eleven million dollars during said period of time; that it employed approximately fifty employees, agents and officers; that it was managed by a board of directors consisting of fifteen stockholders who managed the affairs of said bank, and whose officers were subject to their control; that J. T. Harrell was president of said bank, but he was only one of the five active officers in said institution; that because of his executive duties as president he was not charged with the duty of passing upon the various loans in said bank or all of them,
2132 and did not assume the duty of receiving deposits, the deposits being received generally by the tellers of said bank; that the loans in said bank were approved by a committee, and that J. T. Harrell had no authority as president of said bank to make loans except upon the advice and consent of said committee, and did not undertake to do so; that said committee changed from time to time and many times during the period covered by the various transactions alleged in the defendant's first amended original answer.

X.

That G. W. Peckham was a respected citizen of Wichita County, Texas, his integrity and reputation for honesty and fair dealings were good, he was so regarded by all, that he was actively engaged in business enterprises, that he carried an active bank account with the plaintiff bank, that he was also engaged individually in the purchase, sale and development of oil property, that he conducted the affairs of the Wichita Royalty Company as sole trustee, that during the period from 1925 until 1928 he deposited in the plaintiff bank in his own name, as well as in the name of the Wichita Royalty Company, large sums of money, that both accounts were active, that it was common practice for him to purchase royalty for the Wichita Royalty Company and pay for the same from the account

in his individual name, that he would transfer said property to the Wichita Royalty Company and draw checks upon said company for the purchase price ex-
2133 pended by him. That he would frequently make payments upon the obligations of the Wichita Royalty Company from funds carried in his own name. That plaintiff bank had no means of ascertaining the funds which belonged to him and which belonged to the Wichita Royalty Company, that such common practice of G. W. Peckham was well known to said Wichita Royalty Company, the books and records of said company reflected such dealings, and neither the President, J. T. Harrell, nor the other officers of said bank, or the tellers who were charged with receipts and payments of the deposits could by any kind of diligence ascertain that G. W. Peckham was intending to convert the monies of the Wichita Royalty Company by transferring funds in the name of that company to the account standing in his own name, that he was the Wichita Royalty Company, its sole trustee and had complete authority to make such transfers, and during this period of time, from the year 1925 until 1928 inclusive, G. W. Peckham handled many, many times, making divers and numerous deposits and divers and numerous withdrawals, aggregating many thousands of dollars, and it was impossible for said plaintiff bank, or its officers or directors to trace and ascertain the proper application of funds from the withdrawals he made from the account of the Wichita Royalty Company, and under the circumstances hereinabove related, they were charged with no such duty.

That the defendant, J. T. Harrell was never a partner with G. W. Peckham in any oil venture. He had acquired a small interest in a prospective oil tract of land
2134 in Archer County, Texas, in which G. W. Peckham was also a joint owner, carrying the same for the Wichita Royalty Company, but the same was wholly disconnected with any affairs of the bank and wholly disconnected with the ownership of G. W. Peckham in said tract of land.

That by reason of the foregoing facts, the plaintiff bank is not liable to the defendant, Wichita Royalty Company, for any conversion or misapplication of funds by G. W. Peckham, if in fact any such were made by him.

XI.

That the defendant, Wichita Royalty Company, as well as its stockholders and present trustee, were fully conversant and had knowledge, and knowledge was imputed to the stockholders of all of the facts hereinabove alleged, that the various stockholders had agreed and consented to the plan of management of said business enterprise, to-wit, the Wichita Royalty Company by G. W. Peckham, and had vested in him complete authority, free from their control, the books and records of said company were open to them for inspection, which disclosed all of the facts above set forth, that they were charged with knowledge of such transactions and having knowledge thereof, both thru their trustee and sole manager as selected by them, they accepted the benefits of each and all of the transactions, and by virtue thereof, they are now estopped to set up any cause of action against plaintiff bank by reason of any alleged conversion of funds belonging to the Wichita Royalty Company by G. W. Peckham.

2135 XII.

That said defendant, Wichita Royalty Company, and its shareholders were further charged with knowledge that G. W. Peckham had purchased one-half interest in the Marlborough Addition, that the books and records of said company disclosed said fact and disclosed expenditures made by G. W. Peckham therefor, and disclosed the ownership of said property and the subsequent owners of the corporate stock, and that said stock was accepted by the present trustee, and whatever benefits that were to be derived therefrom were accepted by the Wichita

Royalty Company and its shareholders, and they are, therefore, estopped now to complain that the expenditure of funds was ultra vires and unlawful, and are bound by the payment of the Wichita Royalty Company of obligations growing out of the ownership of one-half interest in Marlborough Addition, as well as all other transactions hereinabove detailed and as set out in defendant's Wichita Royalty Company, first amended original answer.

XIIa.

This plaintiff further says in reply to each and all of the allegations set out by the defendant, Wichita Royalty Company, in its second amended original answer, that it does not know of any misapplication or conversion of funds or sums of money or property that G. W. Peckham committed or perpetrated on the Wichita Royalty Company, defendant, and therefore, denies each and
2136 every allegation set up in the answer of said defendant and its cross action; but in the event and only in the event that said allegations set up in the second amended original answer and cross action be shown on the trial of this cause to be true as to any such conversion or misapplication of funds, then this plaintiff says that all of the transactions set up in said second amended original answer of the defendant, Wichita Royalty Company, on the part of G. W. Peckham, were fully reflected by the books and records kept in the office of the Wichita Royalty Company during the life of said G. W. Peckham. That all of the alleged checks and vouchers were kept in the office and all of the bank statements were kept in said office, and they were at all times open to the inspection of the Wichita Royalty Company and its stockholders; that all checks and bank statements showing the deposit and withdrawal of funds were returned to the office of the Wichita Royalty Company currently each month, and were posted by the bookkeeper of said Company upon the permanent records of said Company; that the bank

statements showing all of said transactions and the withdrawal of funds were returned to the office of the Wichita Royalty Company currently each month and there kept and remained without any concealment whatever, and without any attempt on the part of G. W. Peckham, or any employee of the Wichita Royalty Company to prevent beneficial owners or shareholders thereof from inspecting the same or having knowledge thereof, and all these transactions shown and alleged by the de-
2137 fendant, Wichita Royalty Company, occurred during the years 1925, 1926 and 1927, the last transaction and check being shown on February 19, 1927. During all of which time and for more than two years after said G. W. Peckham was alive and solvent, and that the said shareholders could have during said period of time ascertained and discovered by the use of the slightest diligence all of the facts which they now know; and had the same Wichita Royalty Company taken any action whatsoever pertaining to said transactions within the period of two years after the last transaction or any of the transactions, this plaintiff would have had at that time the opportunity to have had the testimony of G. W. Peckham and his account of said transactions, and had the right to have G. W. Peckham explain said transactions, if any there were, that were not rightfully charged to the account of the Wichita Royalty Company, said G. W. Peckham being then and there and at that time solvent, could have and would have responded to this plaintiff, and this plaintiff could have recouped from G. W. Peckham individually any sum or sums of money that had been wrongfully taken from the Wichita Royalty Company, or in any manner affecting the Wichita Royalty Company, yet this defendant, the Wichita Royalty Company, for more than two years took no action and delayed the same, with all the records and transactions open to it for inspection and open to the stockholders for inspection, and thereby deprived this plaintiff of the right to have the testimony of G. W. Peckham, who has since died and

died prior to the institution of this suit, in order
2138 to explain said transactions, and have deprived this plaintiff of any right or opportunity to recoup its losses, if any, by reason of said transactions; that said defendant, Wichita Royalty Company, and its stockholders delayed taking any action until after the death of G. W. Peckham in the fall of 1929, and have, therefore, deprived this plaintiff of the available right to have the testimony of G. W. Peckham, and to have said transactions examined and looked into when the minds of the parties handling said transactions were fresh concerning the subject matter thereof; and that if said action had been taken within a reasonable time or during the life of G. W. Peckham, this plaintiff could and would have had the benefit of his testimony and his explanation of all of said items, and in the event of any loss could have recouped the same against G. W. Peckham. Had the said Wichita Royalty Company prosecuted said alleged cross action within a reasonable length of time after the occurrence of said transactions, said discovery could have been made and this plaintiff could as aforesaid have recouped any losses during the life time of G. W. Peckham; that it was the duty of the said Wichita Royalty Company and its shareholders to ascertain from the books and records without waiting an undue length of time the condition of the handling of said affairs by G. W. Peckham, but said defendant waited until after the death of G. W. Peckham, in some instances more than four and a half or five years after the said alleged transactions, and are, therefore, estopped now to set up the same.

2139 Wherefore, this plaintiff pleads laches and equitable estoppel on the part of said Wichita Royalty Company and its shareholders from any kind or character of recovery herein against this plaintiff, and asks that the said plaintiff go hence without day by reason of said cross action, and recover of said defendant its costs.

XIII.

Further pleading herein and without admitting any of the allegations contained in the defendant's, Wichita Royalty Company, first amended original answer and cross action, but specifically denying the same, this plaintiff says that if any cause of action said defendant ever had against it, the same is now barred by the Statute of Limitation of two years, and expressly pleads said Statute in bar of defendant's right to recover herein, as any cause of action that defendant might have, arose more than two years prior to the filing of its petition and cross action herein, and all of said transactions were fully known and fully disclosed to it and its stockholders, and they were charged with notice thereof for more than two years prior to the filing of said petition and cross action, and this plaintiff here and now pleads the two year statute of Limitation as a bar of said defendant's right to recover herein.

Further pleading herein and without admitting any of the allegations contained in the defendant's, Wichita Royalty Company, first amended original answer and
2140 cross action, but specifically denying the same, this plaintiff says that if any cause of action said defendant ever had against it, the same is now barred by the Statute of Limitation of four years, and expressly pleads said Statute in bar of defendant's right to recover herein, as any cause of action that defendant might have, arose more than four years prior to the filing of its petition and cross action herein, and all of said transactions were fully known and fully disclosed to it and its stockholders, and they were charged with notice thereof for more than four years prior to the filing of said petition and cross action, and this plaintiff here and now pleads the four year statute of Limitation as a bar of said defendant's right to recover herein.

XIV.

By way of cross complaint and petition against the stockholders and shareholders of the Wichita Royalty Company, who are parties plaintiff in said cross action against this defendant, the plaintiff alleges that said shareholders are liable as co-partners upon the debt sued upon in the plaintiff's first amended original petition, and jointly and severally liable to the plaintiff upon the respective obligations set out and described in the said first amended original petition of the plaintiff, and that said shareholders, having voluntarily made themselves parties to this litigation, have failed to disclose their identity and residence, that is, their names and postoffice addresses; and this plaintiff does not know and does not have access to the books and records so as to as-
2141 certain the names and residences of said respective shareholders, but pleads against such shareholders all of the facts and allegations set forth in the plaintiff's first original petition herein, and prays that such cross complaining shareholders and E. E. Scannell, trustee, be required to disclose the respective names and residences of said shareholders, who have made themselves parties plaintiff in the cross action against this plaintiff, and that this plaintiff have judgment against said shareholders jointly and severally for its debt, cost of suit and for general relief.

XV.

Further pleading herein and for cross action against the co-defendant, J. T. Harrell, a resident of Wichita County, and interpleading herein W. H. Peckham, a resident and citizen of Wichita County, Texas, and W. H. Peckham, administrator of the estate of G. W. Peckham, deceased, Charles I. Francis and Mrs. Flora A. Kemp, independent executors under the last will and testament of J. A. Kemp, deceased, this plaintiff repleads all of the

facts hereinabove alleged in this answer, and in addition thereto, respectfully alleges that if the cause of action set up in the defendant, Wichita Royalty Company's first amended original answer be true, which the plaintiff specially denies, but in the event it be mistaken therein, then it says that in so far as the allegations are concerned in defendant's, Wichita Royalty Company's first amended original answer and cross action pertaining to
2142 the transaction of the Marlborough Addition and expenditure of funds for its purchase and improvements which amounted to the approximate sum of, as alleged in the Wichita Royalty Company's answer herein $75,000.00, that said alleged expenditures were made for and on behalf of the co-partnership known as the Marlborough Addition, and said co-partnership, to-wit: J. T. Harrell, J. A. Kemp, G. W. Peckham, and W. H. Peckham were the recipients of the benefits therefrom, and in the event of a recovery by the defendant Wichita Royalty Company, against this plaintiff, this plaintiff is entitled to judgment over and against the said W. H. Peckham, J. T. Harrell, W. H. Peckham, administrator of the estate of G. W. Peckham, deceased, and Flora A. Kemp and Charles I. Francis, independent executors under the last will and testament of J. A. Kemp, deceased, for whatever sum the said defendant, Wichita Royalty Company, may recover by virtue of the transactions relating to the Marlborough Addition against this plaintiff, and here and now requests that said above named parties be made parties defendant to this suit, and that citation be issued against them in terms of law, and for general relief.

XVI.

Further pleading here, and by way of interpleader against the Security National Bank of Wichita Falls, Texas, a national banking institution, this plaintiff says that if there is any liability, which it does not admit, but specifically denies, growing out of check No. 479, drawn

by G. W. Peckham on the plaintiff bank and pay-
2143 able to the order of the Security National Bank of Wichita Falls, Texas, that said Security National Bank received said deposit and that said check was paid to the Security National Bank, and said Security National Bank deposited said sum to the credit of G. W. Peckham, and if any recovery is made or had herein against this plaintiff by reason of said transaction, it is entitled to judgment over against the said Security National Bank for the amount thereof, as said check was paid to the Security National Bank at Wichita Falls, Texas, by this plaintiff in due course of banking business and that the Security National Bank of Wichita Falls, Texas, is a corporation doing business in Wichita Falls, Texas, having its agent and representative upon whom service may be had, J. C. Mytinger, who resides in Wichita County, Texas, and plaintiff here and now prays that citation issue in terms of law in pleading and citing the Security National Bank of Wichita Falls, Texas, to show cause why this plaintiff should not recover of and from it, the Security National Bank, whatever sum or sums that the defendant, Wichita Royalty Company, may recover against it in its cross action, in so far as the item of $6,000.00 set forth in the Wichita Royalty Company's first amended original answer under Paragraph 16 thereof.

XVII.

Plaintiff further alleges that upon the death of G. W. Peckham, E. E. Scannell was appointed to succeed him and accepted said appointment and continued as trustee for the Wichita Royalty Company with full pow-
2144 er and authority to manage and carry on the business of the said Wichita Royalty Company, and to act for the Wichita Royalty Company without accountability to any of the stockholders thereof. That after said appointment as trustee said E. E. Scannell renewed the notes sued on herein, paid interest on said notes and made payments on the principal of said notes.

That the said E. E. Scannell, before his appointment as trustee, had full knowledge as to how and in what manner G. W. Peckham was carrying on the affairs of said Company, and knew all the intimate dealings of the company, and knew of the execution of said notes made by the said G. W. Peckham, and knew all of the transactions made by G. W. Peckham concerning the affairs of said company, and was familiar and had full knowledge of all the acts complained of by the defendant in their answer and cross action herein.

Therefore, the said E. E. Scannell, having full and complete knowledge of all the transactions complained of by the Wichita Royalty Company in their answer herein, has ratified said acts and transactions by the renewals of the notes sued on and the payment of interest thereon and in the making of payments on the principa' thereof, and having been appointed as trustee with full knowledge and notice of all the acts of G. W. Peckham, which have been complained of herein by the defendant, Wichita Royalty Company, is hereby bound by all the acts of E. E. Scannell, which have been executed by him subsequent to his appointment as trustee, and has confirmed and ratified the acts of G. W. Peckham, and all of said
2145 acts committed by E. E. Scannell have become the acts of the Wichita Royalty Company, and hence the Wichita Royalty Company has ratified all of the transactions sued on herein by the plaintiff, and are now estopped to deny the validity of said acts and transactions.

Wherefore, this plaintiff prays that this cause be abated by virtue of each and both of its pleas in abatement heretofore filed, and if same be not abated, then this plaintiff prays that W. H. Peckham, individually and W. H. Peckham, administrator of the estate of G. W. Peckham, deceased, and that Mrs. Flora A. Kemp and Charles I. Francis, independent executors of the estate of J. A. Kemp, deceased, and that the Security National Bank of Wichita Falls, Texas, be cited to appear and answer herein in terms of law, and that upon the trial of this cause,

the said plaintiff be given judgment in accordance with its original prayer in its original petition heretofore filed, and that said defendant, Wichita Royalty Company, take nothing by reason of its cross action against this plaintiff, and that in the event any sum or sums of money be recovered against this plaintiff by the defendant, Wichita Royalty Company, then this plaintiff prays that it have judgment over and against W. H. Peckham, individually, and W. H. Peckham, administrator of the estate of G. W. Peckham, deceased, Mrs. Flora A. Kemp, and Charles I. Francis, independent executors of the estate of J. A. Kemp, deceased, and the Security National Bank of the City of Wichita Falls, Texas, in whatever sum or sums that it may show itself entitled to recover, and
2146 that it be granted such other and further relief, both in law and equity that this Court may see fit to grant.

BULLINGTON, HUMPHREY & KING,
Attorneys for Plaintiff.

Mr. Rogers:

Together with the answer of J. T. Harrell to the amended cross action of Wichita Royalty Company filed April 27, 1931, Defendant's Exhibit G.

DEFENDANT'S EXHIBIT G.

Filed Apr. 27, 1931, Mrs. A. B. Eichelberger, Clerk Dist. Court Wichita Co. Texas (Mrs. A. B. E.)

Filed 9th day of April, 1937. Geo. W. Parker Clerk, by Elizabeth Hall, Deputy.

In the 78th District Court Wichita County, Texas.

The City National Bank of Wichita Falls, Texas,
vs. No. 24,549-B.
Wichita Royalty Company, et al.

Now comes the interpleaded defendant, J. T. Harrell, in the above entitled and numbered cause, in reply to the

Second Amended Original Answer and Cross action of the defendant, Wichita Royalty Company, and in reply thereto, says:

I.

That there is a misjoinder of causes of action and parties defendant in so far as the Wichita Royalty Company's Second Amended Original Answer setting up a cross action is concerned, as same seeks to set up an action in defense of a promissory note as against the plaintiff, City National Bank, and seeks to set up an action sounding in tort as against this defendant, J. T. Harrell, in that the said Wichita Royalty Company seeks to hold J. T. Harrell liable for said transactions of one, G. W. Peckham, and seeks to hold this interpleaded defendant, J. T. Harrell, liable jointly and severally with the City National Bank on account of certain transactions had between G. W. Peckham as trustee for the Wichita Royalty Company, with the City National Bank and the Security National Bank of Wichita Falls, Texas, which is an action sounding in tort, and, therefore, there is a misjoinder of causes of action in so far as the defendant, J. T. Harrell and the City National Bank is concerned.

2147

Wherefore, premises considered, this interpleaded defendant, J. T. Harrell, prays that this cause of action set up by the defendant, Wichita Royalty Company, in its cross action be, in so far as the action against J. T. Harrell is concerned, be abated and dismissed.

T. R. BOONE,
E. T. DUFF,
Attorneys for J. T. Harrell.

II.

This interpleaded defendant further in the say of a plea in abatement in this cause of action asserted by the

Wichita Royalty Company in its Second Amended Original Petition says:

2148 That if the said J. T. Harrell is a necessary or proper party to said cause of action on the part of Wichita Royalty Company, then in such event there are other necessary parties to this cause of action, if any there be against this interpleaded defendant, J. T. Harrell, who are W. H. Peckham, individually, and W. H. Peckham, administrator of the estate of G. W. Peckham, deceased, Charles I. Francis, and Mrs. Flora A. Kemp, independent executors under the last will and testament of J. A. Kemp, deceased.

That said above named parties are necessary parties if the cause of action of the defendant, Wichita Royalty Company, is properly plead in this case against the said J. T. Harrell, in that it is alleged by the defendant, Wichita Royalty Company, that J. T. Harrell, W. H. Peckham, G. W. Peckham and J. A. Kemp in the late fall of 1925, formed, organized and began operating a copartnership under the firm name of Marlborough Addition, and that said Marlborough Addition was a copartnership engaged in the development of a suburban addition to the City of Wichita Falls, Texas, and in the sale of city lots in said addition, and that a substantial amount of recovery herein sought against this interpleaded defendant, J. T. Harrell, to-wit, $57,218.86, is claimed to be due the defendant, Wichita Royalty Company, by virtue of the expenditure by G. W. Peckham of said sum in the purchase, development and operation of said Marlborough Addition out of funds of the Wichita Royalty Company, and that
2149 said addition was owned and operated by said copartnership as aforesaid, and with the allegation that W. H. Peckham, together with G. W. Peckham, transferred a one-half interest therein to the defendant, Wichita Royalty Company, without authority, but acted as though he did have authority by expending this sum of money belonging to the Wichita Royalty Company

for the benefit and use of said copartnership, thereby resulting in a direct benefit to each and all of the members of said copartnership, to-wit, J. T. Harrell, W. H. Peckham, G. W. Peckham, individually, and J. A. Kemp, and said Wichita Royalty Company are seeking to recover of and from this interpleaded defendant alone, all of said money, when if and any portion thereof is due and owing to the Wichita Royalty Company, it is due and owing not only by J. T. Harrell, but by all four of the members who constitute the Marlborough Addition copartnership, to-wit, J. A. Kemp, W. H. Peckham, G. W. Peckham, or his estate which has W. H. Peckham as its administrator, and J. A. Kemp, or his estate which has Charles I. Francis and Mrs. Flora A. Kemp, as independent executors of said estate of J. A. Kemp.

It is further alleged by said Wichita Royalty Company that said sum of money above named was used for the liquidation of obligations of the Marlborough Addition and that the copartnership of said Marlborough Addition, to-wit, J. T. Harrell, J. A. Kemp, W. H. Peckham, and G. W. Peckham, necessarily received the benefits of said expenditures and said expenditures could not under
2150 said allegations of the defendant, Wichita Royalty Company, have gone alone to J. T. Harrell, but all of said partners must necessarily have reaped benefits therefrom as it is alleged by the Wichita Royalty Company that said monies were unlawfully used by said Marlborough Addition copartnership in the discharge of the amount of the purchase price, development and improvements for the Marlborough Addition, and such being the allegations of the Wichita Royalty Company the four copartners above named necessarily received the benefits of said sum or sums of money, and that the other copartners above named, as well as J. T. Harrell, are necessary parties to this cause of action asserted by the defendant, Wichita Royalty Company, and are necessary parties of the said Wichita Royalty Company to obtain recovery against this interpleaded defendant, J. T. Harrell.

This interpleaded defendant further alleges the facts to be in connection with this plea in abatement, that the allegations of the defendant, Wichita Royalty Company, are in substance and in fact to the effect that by reason of the acts and conduct upon the part of the interpleaded defendant, J. T. Harrell, in accepting, allowing and permitting the monies of the Wichita Royalty Company to be used for the benefit of the Marlborough Addition, same where used unlawfully or wrongfully, and that he, J. T. Harrell, received benefit therefrom by lessening his, J. T. Harrell's obligation to pay the debts of the copartnership under the name of Marlborough Addition, and, therefore, if he, J. T. Harrell, received the benefit of
2151 this money, it necessarily redounded to and was beneficial to the other copartners, to-wit, J. A. Kemp, W. H. Peckham and G. W. Peckham, who likewise received said monies, accepted the same and allowed and permitted the same to be paid by the Wichita Royalty Company in the discharge of the debts of the Marlborough Addition, and, therefore, likewise received certain benefits by virtue of said copartnership and by virtue of said profits coming from the Wichita Royalty Company and are liable to this defendant, Wichita Royalty Company, the same as this interpleaded defendant, J. T. Harrell, and that the said Charles I. Francis and Mrs. Flora A. Kemp, now independent executors under the last will and testament of J. A. Kemp, deceased, as well as W. H. Peckham, individually, and W. H. Peckham, now administrator of the estate of G. W. Peckham, deceased, are each and all resident citizens of Wichita County, Texas, where service may be had on them and on each of them, and that each and all of them are solvent, and there is no reason shown or alleged by the defendant, Wichita Royalty Company in its Second Amended Original Answer why each and all of said last named parties should not be made parties to this cause of action in order to finally adjudicate the rights of the Wichita Royalty Company to recover of and from the copartners of the Marlborough Addition, as well as the adjudication of the rights of said copartners of the

Marlborough Addition as alleged by the defendant, Wichita Royalty Company in its Second Amended Original Answer.

2152 Wherefore, this defendant says that in the event he, J. T. Harrell shall continue as a codefendant to the Wichita Royalty Company's cross action, that there is a want of necessary parties, and that by reason thereof this suit should be abated until the said defendant, Wichita Royalty Company, makes the legal heirs and representatives of J. A. Kemp and G. W. Peckham, as well as W. H. Peckham, individually, parties to this cause of action herein.

Wherefore, this defendant, J. T. Harrell, prays that said cross action of the defendant, Wichita Royalty Company, be abated, as against this interpleaded defendant, J. T. Harrell, until the other members of the copartnership of Marlborough Addition be made parties hereto, and for such other relief in law or in equity that he may be justly entitled to.

T. R. BOONE,
E. T. DUFF,
Attorneys for defendant, J. T. Harrell.

Wherefore, premises considered, this defendant prays that said cause of action or cross action set up by the Wichita Royalty Company in its Second Amended Original Answer be in all things dismissed and abated, and for general and equitable relief for the impleaded defendant, J. T. Harrell.

T. R. BOONE,
E. T. DUFF,
Attorneys for defendant, J. T. Harrell.

2153 State of Texas,
County of Wichita.

I, J. T. Harrell, being duly sworn say that the facts set forth in the foregoing plea in abatement are true and correct, and that I have read over the same, except I do not make affidavit as to the solvency of the estate of G. W. Peckham, deceased.

Witness my hand this the 12th day of April, 1931.
(Signed) J. T. HARRELL.

Subscribed and sworn to before me, a Notary Public of Wichita County, Texas, on this the 12th day of April, 1931.

(Signed) MARY COPELAND,
(Seal) Notary Public, Wichita County, Texas.

III.

Comes now the impleaded defendant, J. T. Harrell, subject to his pleas in abatement heretofore filed, and only in the event such pleas in abatement be overruled, and makes and files this, his answer to the Second Amended Original Answer of the defendant, Wichita Royalty Company, filed herein and for answer thereto, subject to the above, he says:

This impleaded defendant excepts to said answer and cross-action and says that same is insufficient to entitle this defendant, Wichita Royalty Company, to recover anything herein against this impleaded defendant, either in law or in equity and of this he prays judgment of the Court.

2154 IV.

This impleaded defendant further specially excepts (if its former exception be overruled) to the first paragraph

of the defendant, Wichita Royalty Company's Second Amended Original Answer wherein it alleges and brings this suit in the name of E. E. Scannell, Trustee, and one of some thirteen hundred stockholders of the Wichita Royalty Company, who joins herein for himself and all other stockholders of said company, because said petition does not name the other thirteen hundred stockholders or give any kind or character of reason why he does not so name the same, and does not give the address of each and all of these stockholders or give any reason why he cannot do so and does not show any reason or authority for or right to bring this suit in the capacity in which it is brought without naming each and all of the parties and of this he prays judgment of the Court.

This impleaded defendant specially excepts to Wichita Royalty Company's Second Amended Original Answer wherein it attempts to join therein some thirteen hundred stockholders, as said pleading shows that the Wichita Royalty Company is a trust association and no allegation is made showing that Trustee has refused to file this suit, and, therefore, said parties have no right or authority to join herein with the trust estate, and of this he prays judgment of the Court.

V.

This impleaded defendant specially excepts to that portion of paragraph 5 of the defendant, Wichita
2155 Royalty Company's Second Amended Original Answer wherein it alleges that J. T. Harrell, et al. whose names it is not material to allege, were from time to time jointly interested in the purchase for mutual profit of an interest in the oil and gas properties and the sales thereof, constituting inter se a partnership, etc., because the other members of said partnership inter se so alleged by the defendant, Wichita Royalty Company, are not named, and this defendant is not apprized of whom constituted these partnerships inter-se, and is not aware of what partnerships or what interests the said J. T. Har-

rell or G. W. Peckham own, or who constituted these respective partnerships, and the failure to give the other partners of these respective partnerships does not give to this impleaded defendant the relief and information necessary thereto in order to allege a defense herein, and of this, this impleaded defendant prays judgment of the Court that said defendant, Wichita Royalty Company be required to name the other members of the respective partnerships with J. T. Harrell and G. W. Peckham, and for such other orders pertaining thereto as this Court may see fit to issue, and of this he prays judgment of the Court.

VI.

This defendant further specially excepts to the defendant, Wichita Royalty Company's Second Amended Original Answer and cross action in that this defendant says that the same shows upon its face, and according to the wording of said pleading that there is an im-
2156 proper joinder or misjoinder of parties defendant, to-wit, a joinder of the City National Bank with this defendant, J. T. Harrell, upon causes of action in no wise connected or related to each other, and of this he prays judgment of the Court.

VII.

This impleaded defendant further specially excepts to the defendant, Wichita Royalty Company's Second Amended Original Answer in that this defendant, Wichita Royalty's Company, is seeking to hold this impleaded defendant on an alleged cross action growing out of the deposits and withdrawals of accounts that the said Wichita Royalty Company had and maintained in the plaintiff, City National Bank, arising and growing out of numerous transactions, some fifty in number over a period of time of three years which this impleaded de-

fendant had no connection with whatsoever, and by seeking to inter-mingle, mix up and bring this defendant into this suit on account of his connection with the Marlborough Addition it necessarily involves transactions so disconnected with the Marlborough Addition transactions as to hinder, delay and prejudice the rights of this defendant in making his defense to the transactions of the Marlborough Addition or any other action or cross action set up by the Wichita Royalty Company against this defendant, wherein this defendant was not in any manner or way connected therewith, and by reason thereof there is a misjoinder of causes of action and of this, this impleaded defendant prays judgment of the
2157 Court.

VIII.

And for answer herein, if same be necessary, without waiving his plea in abatement, or either of them or any of them, and without waiving his general and special exceptions, or any of them, and subject to the Court overruling each and all of the pleas in abatement, and subject to the order of the Court overruling his general demurrer, and each and all of the special demurrers, comes now this impleaded defendant, J. T. Harrell, and denies each and every allegation set forth in the defendant, Wichita Royalty Company's, Second Amended Original Answer, and says that the same is not true in whole or in part, and of this he puts himself upon the country.

IX.

And for special answer herein, without waiving any of the foregoing proceedings, and subject only to the requirement of this impleaded defendant herein to answer to the merits of this case, this impleaded defendant in special answer thereto in so far as the defendant, Wichita Royalty Company's Second Amended Original Answer is

concerned says that heretofore, to-wit, about the 1st day of June, A. D., 1920, R. R. Robertson by a declaration of trust created what is known as the Wichita Royalty Company by certain articles of association and agreement, duly subscribed and acknowledged by the said R. R. Robertson and filed for record in the office of the County Clerk of Wichita County, Texas, in Volume ..., 2158 page ...., of the Deed Records of Wichita County, Texas, to which reference is here made. By virtue of said articles of agreement and declaration of trust the complete and exclusive affairs of said company were vested in the trustee free of the control of the stockholders. That said declaration of trust, among other things, provided the following:

"The entire affairs of this trust shall be managed by one trustee, who shall own at least one certificate of membership for not less than one share. The trustee may from time to time hire suitable officers for the transaction of the business of this trust; and he may appoint, remove or reappoint such officers, agents and other assistants as he may think best ***"

"The trustee shall have full and exclusive power and authority to conduct the business and affairs of this trust, to purchase, contract for, lease or otherwise acquire, any property necessary or proper for the purpose of the trust; to sell and convey all or any part of the property of the trust; to borrow money on the credit of the trust, and if he deems advisable, to execute notes therefor secured by a mortgage or deed of trust upon the property 2159 of the company, and generally to do all things which in his judgment is necessary and prudent in the management and conduct of the business of the company ***"

That said R. R. Robertson conducted the affairs of said association until he resigned about the .... day of .... A. D., 19...., and under the terms of said declaration of

trust G. W. Peckham was appointed as trustee to succeed R. R. Robertson said appointment being made by the District Court for the 30th Judicial District of Texas in conformity with and pursuant to the articles of the association heretofore referred to. That after said G. W. Peckham had succeeded as trustee for the Wichita Royalty Company he was clothed and vested with the sole and exclusive management and control of said business, and conducted the business of said trust from his qualification and acceptance up until his death in the fall of 1929, and was the sole trustee, having full power and authority to conduct the affairs of said trust at all times complained of in the said defendant's cross complaint herein.

X.

That said G. W. Peckham had full and complete authority to draw checks upon the funds belonging to said association and to make application of said funds, and the plaintiff bank had no higher authority to appeal to in determining the proper application of the funds
2160 than G. W. Peckham, who was the sole trustee and in complete charge of the management of the affairs of said enterprise. That said G. W. Peckham's authority was free from the control of the shareholders of said association, as said shareholders had no legal right to the trust property or funds held or maintained by said trustee, and that said shareholders at all times knew of the appointment of G. W. Peckham as trustee and consented to his appointment and continuation by him of the management of said properties.

XI.

That during all of the times herein complained of the said G. W. Peckham purchased properties for the defendant, Wichita Royalty Company, sometimes taking the title in his own name and sometimes in the name of the

Wichita Royalty Company, sometimes carrying the funds in his own name and sometimes in the name of the Wichita Royalty Company, and transferring properties in his own name to the Wichita Royalty Company and funds in his own name to the account of the Wichita Royalty Company, and likewise transferring funds from the Wichita Royalty Company to funds in his own name; that such was his course of dealing and management of the affairs of said company, and it was known to the company and to its stockholders, or by the use of ordinary diligence could have been known to said shareholders, as said records and books fully disclose these transactions, which records were at all times available and accessible to the shareholders, and by reason thereof all acts, conduct and transactions of the said G. W.
2161 Peckham as trustee were in fact and in truth known to the Wichita Royalty Company.

XII.

That in the fall of 1925, G. W. Peckham and W. H. Peckham negotiated for the purchase of a tract of land adjacent to the city of Wichita Falls, known as the Marlborough Addition, and induced and interpleaded defendant, J. T. Harrell, J. A. Kemp to join them in said purchase. That after the purchase of said property G. W. Peckham acquired the interest of W. H. Peckham, and thereafter without the knowledge of this impleaded defendant sold and conveyed the interest so acquired from W. H. Peckham and the interest owned by him individually to the Wichita Royalty Company, which sale and transfer was made in the early part of 1926. The book and records of the Wichita Royalty Company which were accessible to the stockholders and know to the present trustee, reflected said transactions. That thereafter one-half interest in the assets of the Marlborough Addition were carried upon the books of the Wichita Royalty Company as belonging to said company, and said company acting

through G. W. Peckham as sole trustee expended funds of said Wichita Royalty Company for the purchase and payment of its interest in said property and in the development and improvement thereof, each and all of which transactions were reflected by the books and records of said company and were accessible to and available to all of the shareholders of said company, and were
2162 well known to the present trustee who brings this cross action.

XIII.

That the said Marlborough Addition acting by and through G. W. Peckham and the other copartners borrowed from the City National Bank the sum of approximately Forty Thousand and no/100 ($40,000.00) Dollars, evidenced by a note of the said Marlborough Addition, and indorsed and guaranteed by the said copartners. That said G. W. Peckham, as well as W. H. Peckham, did not advise or inform the other remaining copartners of their sale of their interest in said co-partnership properties to the Wichita Royalty Company, but permitted said properties to remain in the name of G. W. Peckham, who was holding the same as trustee for the Wichita Royalty Company and which fact was known only to the Wichita Royalty Company and its agents, but the expenditures of money for the improvement and development of said addition as well as the purchase price was fully reflected by the books and records of said company and was well known to the present trustee.

XIV.

That shortly after the death of G. W. Peckham said co-partnership was incorporated under the name of the Texas Investment Company, that the corporation was perfected after the death of G. W. Peckham and after the present trustee was appointed. On the 24th of January,

1920, there was a stockholders' meeting, in which E. E. Scannell, trustee, was present and informed the
2163 other co-partners that the Wichita Royalty Company owned a one-half interest in said addition or partnership and was entitled to one-half of the capital stock thereof. Thereupon, on said date the capital stock was issued and one-half of the capital stock was delivered to and accepted by said trustee for the use and benefit of the Wichita Royalty Company. That the said E. E. Scannell was elected president of said corporation; that he signed the certificates of stock; called meetings of the stockholders and board of directors and was elected a member of the board of directors of said corporation, accepted the benefits of said enterprise and the benefits of the ownership of said stock, and the books and records of said Wichita Royalty Company fully reflected all of said facts and they were known to the shareholders of said Wichita Royalty Company, or could have been known by the use of ordinary diligence.

XV.

That when it was ascertained by the remaining shareholders and partners of the Marlborough Addition that G. W. Peckham had acquired for the Wichita Royalty Company a one-half interest in the properties of said copartnership, it was later incorporated, and the said plaintiff bank permitted the administrator of the estate of G. W. Peckham to be relieved from his indorsement and guarantee upon the obligations of the Texas Investment Company, accepted in lieu thereof the indorsement and guarantee of the Wichita Royalty Company, and that the said Wichita Royalty Company by reason of
2164 its ownership of one-half of the capital stock and of the guarantee and indorsement of the obligations owing by said corporation to the plaintiff bank herein, thereafter made payments on said obligations, and the records and books of said Wichita Royalty Company show

payments thereon, all of which payments were made with the full knowledge of the present trustee and imputed knowledge to the shareholders by virtue of the fact that the said trustee was the sole and exclusive manager of said properties and all rights incident thereto and not subject to the control of the shareholders.

XVI.

This impleaded defendant further alleges the facts to be that during 1922 and 1929, and until the death of G. W. Peckham that the said G. W. Peckham was a reputable and highly respected citizen of Wichita County, Texas, and his integrity and reputation for honesty and fair dealing was good, that he was so regarded by all and he was actively engaged in business enterprises, carrying at all times so this impleaded defendant understood a large active bank account with the City National Bank, Security National Bank and other banking institutions, and that he was also engaged individually in the purchase, sale and development of oil properties and other properties and that he conducted the affairs of the Wichita Royalty Company as sole trustee, and that during the period from 1925 until 1928, inclusive, he had a large active bank account in his own name, as well as
2165 in the name of the Wichita Royalty Company, handling large sums of money, and in so far as this impleaded defendant is concerned, or knew or had any knowledge thereof, was handling the affairs of the Wichita Royalty Company as well as his individual affairs in an upright, honorable and honest manner, and that he may or may not have made transfers of monies from the respective accounts, or to the respective accounts, or may or may not have purchased property in his individual name paying therefor and then transferring the same in the name of the Wichita Royalty Company, reimbursing himself for the monies so expended, but in so far as this impleaded defendant was

concerned, he never knew of any circumstances or had any suspicion that the said G. W. Peckham was not handling said accounts properly, or not handling the affairs of the Wichita Royalty Company in any manner other than he had a right to do, and that this impleaded defendant had no means or way of obtaining information concerning the funds which belonged to the Wichita Royalty Company and the funds which belonged to G. W. Peckham individually, as the books of both of said parties were not disclosed or accessible to this impleaded defendant, and this impleaded defendant further says that he was not acquainted with the authority of G. W. Peckham to purchase properties in his own name and then transfer the same to the Wichita Royalty Company, and in this connection this impleaded defendant specially says that he did not know the terms and conditions of the
2166 trust agreement; that the said G. W. Peckham was acting under for the Wichita Royalty Company; other than that he, G. W. Peckham, had authority to borrow money for said company and obligate said company for the payment therefor as he understood and it was generally reputed that G. W. Peckham was the sole, exclusive manager, operator and trustee for the Wichita Royalty Company without any kind or character of limitation, and so far as he knew said G. W. Peckham had the right and authority to check out and make deposits of monies belonging to the Wichita Royalty Company as he, G. W. Peckham, desired, and had complete authority to make such transfers as he, G. W. Peckham, desired, and handled the books, records, transfers and deposits and withdrawals of the Wichita Royalty Company, so this impleaded defendant now alleges and says were at all times open to inspection for or by any one interested, directly or indirectly with the Wichita Royalty Company or the profits thereof, and this impleaded defendant now alleges that the stockholders were charged with the duty of making this inspection of the books, records, transfers and monies belonging to the Wichita Royalty Company.

XVII.

This impleaded defendant, J. T. Harrell specially answers and says that he was never at any time a partner with G. W. Peckham in any oil venture save and except he acquired a small interest in a prospective tract of land in Archer County, Texas, in which he, with W.
2167 T. Knight and G. W. Peckham were joint owners, the said G. W. Peckham carrying the same in his name for the use and benefit of the Wichita Royalty Company, and the title to said property being at all times carried in the name of W. T. Knight, but that same was wholly disconnected with any of the affairs of said impleaded defendant, J. T. Harrell, other than that each of said parties received benefits from and contributed to any deficit that might be due by them to the said W. T. Knight, who carried said property in his name, and that by reason of the foregoing facts this impleaded defendant denies he is in any manner or way liable to the defendant, Wichita Royalty Company for any alleged conversion or misapplication of any funds belonging to the Wichita Royalty Company by the said G. W. Peckham, deceased, if in fact any such were made by him.

XVIII.

This impleaded defendant further alleges that the only transactions other than as stated in the preceding paragraphs which he ever had or in any manner ever had with G. W. Peckham was the transaction or sale to G. W. Peckham in the fall of 1925 or first part of 1926 wherein this defendant, together with one, C. E. Basham, sold, assigned and conveyed for a valuable consideration certain oil rights and royalties in Wilbarger County, Texas, which oil rights and royalties were immediately reflected on the records of the defendant, Wichita Royalty Company, and from which rights and properties the Wichita Royalty Company has received large
2168 sums of money and that said property has been in the possession of and under the control of

Wichita Royalty Company and its trustee since said date, and they are now controlling and asserting ownership therein, and have at all times asserted ownership thereto since the purchase from this impleaded defendant, together with C. E. Basham of the rights therein, and that the price and sum so paid for said interest was reasonable and at no time did this defendant ever receive any sum or sums of money from the Wichita Royalty Company or any trustee that he was not justly and legally entitled to. That by reason of the foregoing facts this impleaded defendant is not liable to the defendant, Wichita Royalty Company for any sum or sums whatsoever.

XIX.

This impleaded defendant further alleges in reply to each and all of the allegations set up by the Wichita Royalty Company in its Second Amended Original Answer that he does not know of any misapplication or conversion of any funds or sums of money or property that the said G. W. Peckham committed or perpetrated on the Wichita Royalty Company, and, therefore, denies any connection with any alleged conversion or alleged misapplication, but specially says that he had nothing to do therewith and was not cognizant of any facts or circumstances that would cause him to believe said facts and knew of no misapplications or conversions on the part of said G. W. Peckham, and was not in a position to learn the same, as he did not have charge or access to the books and records of the Wichita Royalty Company or the books and records of G. W. Peckham and therefore could not by the use of any means been able to discover any misapplication or conversions, if any there were, and therefore by reason thereof the said defendant, Wichita Royalty Company, is not entitled to recover any sum or sums whatsoever against this impleaded defendant.

2169

That the defendant, Wichita Royalty Company, as well as its stockholders and present trustee, were fully conver-

sant and had knowledge, and knowledge was imputed to the stockholders of all of the facts hereinabove alleged, that the various stockholders had agreed and consented to the plan of management of said business enterprise, to-wit, the Wichita Royalty Company by G. W. Peckham, and had vested in him complete authority, free from their control, the books and records of said Company were open to them for inspection, which disclosed all of the facts above set forth, that they were charged with knowledge of such transactions and having knowledge thereof, both through their trustee and sole manager as selected by them, they accepted the benefits of each and all of the transactions, and by virtue thereof, they are now estopped to set up any cause of action against this impleaded defendant by reason of any alleged conversion of funds belonging to the Wichita Royalty Company by G. W. Peckham.

That said defendant, Wichita Royalty Company, and its shareholders were further charged with
2170 knowledge that G. W. Peckham had purchased one-half interest in Marlborough Addition, that the books and records of said Company disclosed said facts and disclosed expenditures made by G. W. Peckham therefor, and disclosed the ownership of said property and the subsequent owners of the corporate stock, and that said stock was accepted by the present trustee, and whatever benefits that were to be derived therefrom were accepted by the Wichita Royalty Company and its shareholders, and they are, therefore, estopped now to complain that the expenditure of funds was ultra vires and unlawful, and are bound by the payment of the Wichita Royalty Company of obligations growing out of the ownership of the one-half interest in Marlborough Addition, as well as all other transactions hereinabove detailed and as set out in defendant's, Wichita Royalty Company's second amended original answer.

Further pleading herein and without admitting any of the allegations contained in the defendant's, Wichita

Royalty Company's second amended original answer and cross action, but specifically denying the same, this impleaded defendant says that if any cause of action said defendant ever had against them, the same is now barred by the Statute of Limitation of two years, and expressly pleads said Statute in bar of defendant's right to recover herein, as any cause of action that defendant might have, arose more than two years prior to the filing of its petition and cross-action herein, and all of said transactions were fully known and fully disclosed to it and its
2171 stockholders, and they were charged with notice thereof for more than two years prior to the filing of said petition and cross-action, and this impleaded defendant here and now pleads the two year Statute of Limitation as a bar of said defendant's right to recover herein.

Further pleading herein and without admitting any of the allegations contained in the defendant's, Wichita Royalty Company's Second Amended Original Answer and Cross-Action, but specifically denying the same, this impleaded defendant says that if any cause of action said defendant ever had against them the same is now barred by the Statute of Limitation of four years, and expressly pleads said Statute in bar of defendant's right to recover herein, as any cause of action that defendant might have arose more than four years prior to the filing of its petition and cross action herein, and all of said transactions were fully known and fully disclosed to it and its stockholders, and they were charged with notice thereof for more than four years prior to the filing of said petition and cross action, and this impleaded defendant here and now pleads the four year Statute of Limitation as a bar of said defendant's right to recover herein.

XX.

This impleaded defendant further says, in reply to each and all of the allegations set up by the Wichita Royalty

Company in its Second Amended Original Answer, that he does not know of any misapplication or conversion of any fund or sums of money or property that the said George W. Peckham committed or perpetrated
2172 on the Wichita Royalty Company, and, therefore, denies each and every allegation set up in the Wichita Royalty Company's Second Amended Original Answer, but in the event, and only in the event that said allegations set up in the Second Amended Original Answer be shown on the trial of this cause to be true, then this impleaded defendant says that all of the transactions set up in the Wichita Royalty Company's Second Amended Original Answer on the part of George W. Peckham were, in some manner or way and in numerous ways, reflected by the books and records kept in the office of the Wichita Royalty Company during the life of the said George W. Peckham and were, at all times, open to the inspection of the Wichita Royalty Company and its beneficial owners, and that the checks and vouchers and debit statements of the bank in which these checks were run, together with entries thereon on the records of the Wichita Royalty Company were returned to the office of the Wichita Royalty Company immediately after the cashing of said checks and upon the end of the month, at which time said checks were cashed, the bank statements showing debits thereon were returned to the office of the Wichita Royalty Company and all kept and remained, and without being hidden, without any seclusion, without any attempt on the part of George W. Peckham, or anyone else, to prevent the beneficial owners of the Wichita Royalty Company of inspecting the same and having knowledge thereof, and that these transactions pertaining to this impleaded defendant occurred during the years of 1925, 1926 and 1927; the last pleaded check or transaction occurring on February 19th, 1927; and dur-
2173 ing all of this period Company taken any action whatsoever pertaining to these transactions for a period of two years after the last transaction or any of the transactions, this impleaded defendant would have

had, at that time, the opportunity to have had the testimony of George W. Peckham to explain these respective transactions and—if any there were that were not rightfully charged to the account of the Wichita Royalty Company—then the said George W. Peckham, being at that time solvent—could have and would have responded to this impleaded defendant, as this impleaded defendant could and would have been entitled and able to recoup from George W. Peckham, individually, any sum or sums of money that in any manner or way affected the Wichita Royalty Company, or affected this impleaded defendant; and that the Wichita Royalty Company—(in delaying this action with these records and transactions, clearly open to inspection on their part or any of their part or any beneficial interest owners of Wichita Royalty Company's part)—have deprived this impleaded defendant of the right to have the testimony of George W. Peckham who has since died and died prior to the time of the institution of this cause of action, and have deprived this impleaded defendant of a chance or an opportunity to recoup any loss or loss that this impleaded defendant may sustain by virtue of the fact that since said time the said George W. Peckham has become insolvent and, therefore, this impleaded defendant has been deprived of rights and privileges of which he would not have been deprived had the said Wichita Royalty Com-
2174 pany or any of its beneficiaries prosecuted said alleged cross-action or cause of action within a reasonable length of time after the occurrence of same, or after they knew same, or by the use of ordinary diligence should have known same and, therefore, this impleaded defendant here and now pleads leches and equitable estoppel on the part of said Wichita Royalty Company from any kind or character of recovery herein against this impleaded defendant and by reason thereof, this impleaded defendant should be allowed to go hence without day, together with his costs.

XXI.

This defendant further pleading herein and as a cross action against the following named parties, to-wit: W. H. Peckham, a resident and citizen of Wichita County, Texas, and W. H. Peckham, administrator of the Estate of George W. Peckham, deceased, Charles I. Francis and Mrs. Flora A. Kemp, independent executors under the last will and testament of J. A. Kemp, deceased; this impleaded defendant here and now re-pleads all of the facts hereinabove alleged in this answer, as well as says that if any of the facts or allegations set forth in Wichita Royalty Company's Second Amended Original Answer to be true, which this impleaded defendant does not admit but specially denies, but that in the event it be shown that any of said facts or all of said facts are true, then this impleaded defendant says that at the time of the transactions set up in the defendant's, Wichita Royalty Company's Second Amended Original Answer,
2175 the said J. A. Kemp was Chairman of the Board of Directors of the City National Bank and that P. P. Langford of Wichita Falls, Texas, was the President of the City National Bank and that W. L. Robertson and C. E. Basham and this impleaded defendant were the Vice-Presidents of said City National Bank and, therefore, the said J. A. Kemp as Chairman of the Board of Directors of the City National Bank had the same information pertaining to the transactions with George W. Peckham in so far as they pertain to the Marlborough Addition to the City of Wichita Falls, Texas, being one of the transactions specifically mentioned in the defendant's, Wichita Royalty Company's, Second Amended Original Answer as this impleaded defendant, and was acquainted with all of the facts that impleaded defendant was acquainted therewith and that all of the expenditures of moneys of the Wichita Royalty Company for the purchase of the Marlborough Addition and the improvements and betterments thereon made, which amounted to approximately the sum of $60,000.00 or $70,000.00, as al-

leged in the Wichita Royalty Company's Second Amended Original Answer, were made and expended under such circumstances as that the said J. A. Kemp had the same information and knowledge thereof as this impleaded defendant, J. T. Harrell, and that said J. A. Kemp, together with W. H. Peckham whom this impleaded defendant specially alleges was the brother of said George W. Peckham, was an associate with George W. Peckham and was a member of the partnership of Marlborough Addition and was acquainted with all of the transactions pertaining to the Wichita Royalty Company and
2176 was acquainted with all of the facts pertaining to the transaction that George W. Peckham had with the Wichita Royalty Company and the said W. H. Peckham, being the member of the Marlborough Addition partnership, that he with the said J. A. Kemp, as well as George W. Peckham, were all recipients of the benefits, if any there were, from the contributions obtained or paid out of the Wichita Royalty Company, and were each and all acquainted with the facts and even more so than this impleaded defendant; and this impleaded defendant here and now says that if any of the facts or allegations set forth in the defendant's, Wichita Royalty Company's, cross action against this impleaded defendatn be true, which this defendant specially denies but says that if it be true, then said allegations and said facts so alleged in the defendant's, Wichita Royalty Company's Second Amended Cross Action, are here and now pleaded over and against the said defendant, J. A. Kemp, or his executors, Charles I. Francis and Mrs. Flora A. Kemp and are also, hereby, specifically pleaded against W. H. Peckham individually and against W. H. Peckham as the administrator of George W. Peckham, deceased, and in the event of a recovery by the defendant, Wichita Royalty Company, against this impleaded defendant, J. T. Harrell, then this impleaded defendant, J. T. Harrell, hereby, alleges that he is entitled to recover over and against the said W. H. Peckham individually and as administrator of the estate of George W. Peckham, deceased,

and the estate of J. A. Kemp, to the extent of three-fourths of whatever amount or sum that the
2177 said defendant, Wichita Royalty Company may recover against this impleaded defendant; as said W. H. Peckham, George W. Peckham and J. A. Kemp were the owners of three-fourths of the Marlborough Addition and, therefore, this impleaded defendant, in the event of a recovery against him on the Marlborough Addition transaction, is entitled to a judgment over and against the said W. H. Peckham and the estates of J. A. Kemp and George W. Peckham to the extent of three-fourths of the amount thereof, as said parties owned three-fourths interest in and to the Marlborough Addition and that the said impleaded defendant, J. T. Harrell, should be entitled to recover against them three-fourths of whatever sum or sums the said defendant, Wichita Royalty Company, may recover by virtue of the transactions relating to the Marlborough Addition against this impleaded defendant and he here and now requests and prays that said above named parties, to-wit, Charles I. Francis and Mrs. Flora A. Kemp, as independent executors of the estate of J. A. Kemp, deceased, and W. H. Peckham, individually and W. H. Peckham as the administrator of the estate of George W. Peckham, deceased, be made parties to this suit and that citation be issued against them in terms of law, requiring them to show cause why they should not be made to respond in the manner as the law requires under the pleadings herein filed.

Wherefore premises considered, this impleaded defendant prays that this cause be abated by virtue of each and all of his pleas in abatement heretofore filed, and if same be not abated then this impleaded defend-
2178 ant prays that W. H. Peckham individually and W. H. Peckham, administrator of the estate of George W. Peckham, deceased, and Mrs. Flora A. Kemp and Charles I. Francis, independent executors of the estate of J. A. Kemp, deceased, be cited to appear and

answer herein in the terms of law, and that upon a trial of this cause this impleaded defendant be allowed to go hence without day, together with its costs in so far as the defendant, Wichita Royalty Company is concerned, and that the said Wichita Royalty Company take nothing by reason of its cross action against this impleaded defendant, but that in the event any sum or sums of money be recovered against this impleaded defendant by the Wichita Royalty Company, then this impleaded defendant, J. T. Harrell prays that he have judgment over and against said W. H. Peckham individually and W. H. Peckham as administrator of the estate of G. W. Peckham, deceased, and Mrs. Flora A. Kemp and Charles I. Francis, independent executors of the estate of J. A. Kemp, deceased, for three-fourths of any and all sum or sums of money that the said Wichita Royalty Company may show itself entitled to recover against this defendant, and that he be granted such other and further relief, both in law and equity that this Court may see fit to grant.

T. R. BOONE,
E. T. DUFF,
Attorneys for defendant, J. T. Harrell.

2179 Now comes this impleaded defendant, J. T. Harrell, in reply to the cross action of the City National Bank of the City of Wichita Falls, Texas, wherein it is seeking to recover against this impleaded defendant any sum or sums of money which may be recovered against it by virtue of the cross action of the Wichita Royalty Company, and for such reply this defendant says:

I.

That he excepts to the allegations of the City National Bank of the City of Wichita Falls, Texas, and says that the same are insufficient in law or equity to require him to answer, and of this he prays judgment of the Court.

II.

And for answer thereto, if same be necessary, this defendant denies each and every allegation set forth in Plaintiff's cross action, and of this he puts himself upon the country.

III.

Further answering herein, if same be necessary, to the petition of the City National Bank, wherein the City National Bank is seeking to recover of and from this defendant any sum this defendant specially says that all of the allegations set up by the City National Bank wherein the City National Bank is seeking to recover against this defendant the sum of $75,000.00 on account of the transactions pertaining to the Marlborough Addition, this defendant says that he had no knowledge of the ownership of the Wichita Royalty Company in and to the Marlborough Addition until long after the death of
2180 G. W. Peckham, and that he was not apprized of and did not know that said G. W. Peckham was using the monies of, if he ever did use any, the Wichita Royalty Company in the payment of the purchase price or expenditures for the Marlborough Addition, and not being in a position to learn of these facts is not responsible for what acts or conduct the said G. W. Peckham may have committed in connection with any representative or representatives of the City National Bank, and of this he is ready to verify.

IV.

And for further answer therein, if same be necessary, this defendant says that certain transactions on the part of the bank were done without his knowledge or consent, and if they were not done rightfully, which this defendant believes they were, but should he be mistaken there-

in, that same were done more than two years prior to the filing of this cross action, and, therefore, same is barred by the two year statute of limitation, which this defendant here and now pleads.

Wherefore, premises considered, this defendant prays that the City National Bank of Wichita Falls, Texas, take nothing by reason of its cross action aginst him and that he be allowed to go hence without day, together with his costs, and for such other and further relief, in law or equity that this Court may see fit to grant.

T. R. BOONE,
E. D. DUFF,
Attorneys for defendant, J. T. Harrell.

2181 Mr. Rogers:

Also the mandate of the Supreme Court of Texas, certified copy of the opinion filed in the State District Court, in 1936, Defendant's Exhibit H.

DEFENDANT'S EXHIBIT H.

In The Supreme Court of Texas.

From Wichita County, Second District.

Wichita Royalty Company, Et Al, Plaintiffs in Error.

vs. No. 6800

The City National Bank of Wichita Falls, Et Al, Defendants in Error.

Suit was by the City National Bank of Wichita Falls, defendant in error, against Wichita Royalty Company and E. E. Scannell, as its Trustee and individually. Recovery was sought by the Bank of a balance alleged to be

due on two notes, one executed, and the other indorsed, by the Royalty Company, together with foreclosure of liens on certain properties. The Royalty Company, through E. E. Scannell, Trustee, pleaded various defenses and filed its cross action against the Bank and impleaded J. T. Harrell, one of its principal officers, seeking from both recovery of the Company's alleged balance of deposit, less authorized charges against it. W. H. Peckham, individually and as Administrator of the estate of G. W. Peckham, deceased, and Flora A. Kemp and C. I. Francis, independent executors of the last will and testa-
2182 ment of J. A. Kemp, deceased, were impleaded parties, brought into the case because of alleged transactions of W. H. Peckham and J. A. Kemp prior to his decease, with G. W. Peckham, relating to Marlborough, a real estate venture in which the parties were engaged in putting on a residence addition to the City of Wichita Falls.

The trial Court instructed a verdict in favor of the Bank on the two notes, with foreclosure, and against the Royalty Company on its cross action, and denied recovery against the impleaded defendants. Upon appeal by the Royalty Company the judgment was affirmed by the Court of Civil Appeals by a divided Court. 74 S. W. (2) 662. The majority opinion is by Judge Dunklin, Judge Power filing a concurring, and Judge Lattimore a dissenting, opinion. Upon first consideration Chief Justice Conner and Justice Lattimore constituted a majority of the Court and voted to reverse and remand, each filing an opinion, Judge Conner concurring in Justice Lattimore's dissent. Following the death of Judge Conner and the appointment of Judge Power, the first decision was reversed, Judge Power filing an opinion concurring in the opinion originally filed by Judge Dunklin and subsequently supplemented by him. 74 S. W. (2) 682. Judge Lattimore adhered to his dissent as expressed in the opinion theretofore filed. 74 S. W. (2) 682. Writ of error was granted on the application of the Royalty Company and E. E. Scannell, Trustee, "On the importance of the

question" and notation was made that the case
2182a was to be submitted with Q. A. & P. Ry. Co. vs. Wichita State Bank & Trust Co., 61 S. W. (2) 170, in which writ of error had theretofore been granted. The cases were submitted together before the Court and Commission sitting in banc.

The Royalty Company was organized in 1920 under a Declaration of Trust, in form a common law trust, membership in which is evidenced by certificates of interest. The certificate holders are referred to in the Declaration as stockholders. They are about 1,300 in number and widely scattered. Briefly, the Company is an association of persons who furnished the capital for a business to be operated for their joint account and for mutual profit, and to be conducted by a chosen agent or trustee who was specially empowered as set forth in a Declaration of Trust similar in essential respects to that involved in Thompson vs. Schmitt, 115 Tex. 53, 274 S. W. 554. Its legal effect was to create a partnership in which the Trustees were managing agents, or partners, and such is the legal effect of the Declaration here involved, except, that only one trustee is provided as managing agent. R. R. Robertson was the first trustee. Upon his resignation in 1923 G. W. Peckham was appointed in the manner set forth in the Declaration, as his successor. A few days after Peckham's death, on November 7, 1929, E. E. Scannell was appointed trustee. Prior thereto and even before Peckham was appointed trustee. Prior thereto and even before Peck-
ham became trustee, Scannell had been the book-
2183 keeper of the Company, and nominally, though not in reality, its secretary-treasurer. The business to be operated as set out in the Trust Declaration was to purchase and sell oil and gas royalties, and other oil and gas properties. No other purpose is set forth, or authorized. The Declaration stipulates that its affairs are "to be managed by one trustee"; that the trustee shall have full and exclusive authority to conduct the business of the Trust; to purchase, contract for, lease, or otherwise acquire, any property necessary or proper for

the purpose of the Trust; to sell and convey all or any part of the property of the Trust; to borrow money on the credit of the Trust; and "if he deems advisable, to execute notes individually secured by a mortgage or deed of trust upon the property of the Company, and generally to do all things which in his judgment is necessary and prudent in the management and conduct of the business of the Company." The Trustee's powers are broad, but no authority is granted for their exercise other than to carry on the business of the Trust within its defined limits. He is empowered to "declare dividends from the net income of the Trust, and his decision as to the amount of dividends is final." No stipulation of the Declaration is susceptible of the construction that the trustee is privileged to use the trust property or credit for his own benefit. While he is to be held responsible "only for his own wilful and corrupt breach of trust and not for any honest error of judgment," he has no interest in the Trust or its property other than
2184 a managing interest, and such interest as may be evidenced by a certificate of ownership. The Declaration provides that all investments made and all property acquired "*shall be made and held in the name of the Trustee as such Trustee.*" (Italics ours); also that "the Trustee shall hold all the funds and property now or hereafter held by, or paid to, or transferred or conveyed to him or his successor or successors as Trustee hereunder in trust for the purpose, with the powers and subject to the limitations" therein declared, "*for the benefit of the castui que trustent.*" (Italics ours).

The Trustee through an arrangement made between the Bank and Peckham as Trustee, carried with the Bank in its own name, Wichita Royalty Company, a deposit account, G. W. Peckham also had in the bank a deposit account individually throughout the period of his trusteeship. The Trust had a liability record with the Bank, borrowing from it and repaying to it money through Peckham as Trustee from time to time. Likewise Peck-

ham had an individual liability record with the Bank, borrowing and repaying in part from time to time. Also Peckham was engaged in part individually in the same business as the Trustee, and throughout the period involved bought and sold in that business on his own account.

The statement of facts contains more than 1100 pages, but it, together with a statement of the pleadings, is sufficiently summarized in the majority and minority opinions of the Court of Civil Appeals in connection with the questions there discussed, to serve as a basis for decision of the questions before us. Reference is made to the summation referred to, as a restatement would unduly prolong this opinion.

2185

The questions presented grow out of transactions between the Bank and the Trustee, Peckham, and involve transactions of the Trustee with the Bank and certain of its officials which touched and affected the interests of the Trust; also transactions and acts of Scannell as Trustee, with the Bank and its officials after Peckham's death. The case involves primarily a series of transactions carried out in the same way over a long period of time during which Peckham, by means of his checks as Trustee, payable usually to the Bank, transferred large sums of money from the Trust account into his active individual account, whence he checked it out by means of checks signed by him personally, largely for non-Trust purposes.

These transactions lie at the very foundation of the Bank's case, and will be stated in their chronological order rather than in the order pleaded. For nearly two years, so far as the record reveals, Peckham, as Trustee, had observed in his banking operations the requirement of the Trust of the Trust Declaration that all property of the Trust should be held in the name of the trustee as such. On October 8, 1925, he began a system of operation with respect to the deposit account of the Trust in

violation of that requirement by causing a transfer of
$5,500 to be made from the Trust account to his
2186 own individual account in the same bank. Generally speaking the transfers were made by means of what is known as voucher checks. The statement of the majority opinion of the Court of Civil Appeals relating to the transfer reads:

"During the period beginning October 8th, 1925, and ending November 12, 1929, Geo. W. Peckham drew 49 checks on funds deposited in plaintiff bank to the credit of the Wichita Royalty Company, aggregating the sum of $134,712.14, the checks being signed by him as trustee for the Royalty Company, and after his death seven additional checks were drawn on the same account by Scannell, the substitute trustee, aggregating $10,055.42. Forty-five of the checks drawn by Peckham, aggregating $119,473.98, were made payable to the bank, and 4, totaling $9,238.16, in favor of Peckham, personally, and for those 49 checks which he deposited he was given personal credit on the books of the bank. * * * Peckham also received credit on his personal account for $6,000.00 realized from oil investments belonging to the Royalty Company which had theretofore been deposited to his personal credit in the Security National Bank."

Most of the checks used in making the transfers were voucher checks, and when issued showed on the attached vouchers that they were in payment of the items noted thereon. The following is typical of the form used:

2187 Remittance Advice.

Attached hereto is our check in full settlement of the items listed below. If not correct please return with explanation.

Description Detail Total

To apply on note held by City National Bank $1,500.00.

Detach here before depositing check
Perforation

Wichita Royalty Company,

Wichita Falls, Texas.

August 16, 1927. No. 635.

When properly indorsed Pay to the order of City National Bank $1,500.00 Exactly One Thousand Five Hundred Dollars no cents.

To the City National Bank,
Wichita Falls, Texas.
By G. W. PECKHAM,
Trustee."

On the back of the lower half of the checks were printed above the usual place of indorsement these words: "Indorsement hereon by the payee constitutes acknowledgment of full payment of the items listed on the accompanying remittance statement. No other receipt required." Peckham requested the tellers handling the deposits of these checks to give him credit individually for the proceeds, which was done. No reason is given by the Bank or any of its officials for dealing with the Trustee and the Trust account in the manner detailed other than a desire to comply with the personal request of Peckham in whom they reposed confidence. As
2188 stated by vice-President Harrell in response to an inquiry in this connection: "We would endeavor to comply with the wishes of the customers." The vouchers were detached from the checks before presentment, and the Bank gave Peckham's personal ac-

count credit for the proceeds solely upon his request, and did so without inquiry or investigation on its part, or any showing of authority whatsoever on Peckham's part.

In the manner stated above the funds of the Trust and those of Peckham were commingled in his personal account. Nor is it material so far as the result is concerned that the checks used in making the transfers were in some instances payable to the Bank, and in some instances to Peckham himself, as the result of the transactions was to destroy the evidence of the stockholders' title to their moneys standing in the name of Wichita Royalty Company and to substitute for it evidence of the Trustee's personal title. This result was accomplished by the cooperative acts of Peckham and the Bank with knowledge on the part of the bank that the Trust funds were being commingled with those of Peckham, and with further knowledge that a part of the property of the trust was being held and carried in the name of the Trustee personally and not as trustee.

It is not important as bearing on the questions involved that Peckham could have drawn checks on the Trust account and cashed them, and deposited the proceeds in his personal account, thus accomplishing the same
2189 result. He did not use this method of getting control of the Trust funds, by which the Bank would not have been connected with the misappropriation; but used the method stated above, which connected the Bank with it. The dissimilarity of the two methods from the standpoint of legal significance is pointed out in the Q. A. & P. Ry. Co. (Com. app.) .... S. W. (2) ...., (opinion this day adopted) in which Toronto Club vs. Dominion Bank, 25 O. N. T. L. Rep. 330; Broadway vs. Bushwick Natl. Bank, 216 N. Y. S. 713, and Underwood Ltd. vs. Bank of Liverpool, 1 K. B. 775 (1924), are cited.

Further facts in connection with the manner of operating the two account disclose that from October 8, 1925,

the date when Peckham made his first transfer of Trust funds to his personal account, throughout the entire period involved, he continued making similar transfers from time to time and the Bank continued its participation with him in so doing. The operations of Peckham were not confined to effecting with the Bank's acquiescence the transfer of large sums of the Trust money to his personal account, and in thus commingling the Trust property with his own in his individual account. The majority opinion of the Court of Civil Appeals in detailing the further operations with respect to the withdrawal and application of the commingled funds, says:

"Most of the 57 checks on which the cross action was based were made payable to the bank while others were made payable to Peckham, but all of them
2190 were given in payment for oil royalties, investments and improvements in the Marlboro Addition and as payments on outstanding promissory notes and they were all so applied. The checks so given for investments and improvements in the Marlborough Addition and covering one-half of the total amount of such investments aggregated $55,719.44. The checks applied to investments in oil royalties and oil properties aggregated $57,240.00. Thirty-three of the checks were given as payments on promissory notes, of which 26, aggregating $23,751.75, were drawn by G. W. Peckham, and 7 * * * aggregating $10,055.42, were drawn by Scannell as trustee after Peckham's death. Some of the checks so given by Scannell were applied on the Royalty Company's note to the Bank given for the two loans above mentioned. and the rest as payments on the Marlborough Addition notes. Nineteen of the checks drawn by Peckham were likewise applied as payments on the same notes; but seven of them, * * * aggregating $10,750.00, were credited on the books of the bank as payments on Peckham's personal notes. The evidence showed that prior to the date of check No. 584, Peckham had paid to the Royalty Company $500.00 to be applied on the Royalty

Company's notes to the bank. And the books of the Royalty Company showed that Peckham had been given further credits on his account with the Company as follows: August 31, 1927, for $500.00 to be applied on the Company's notes to the bank; October 9, 1927, for $1336.00; November 25, 1927, for $1500.00, to be used in payment of
the Royalty Company's note to the bank; and
2191 February 15, 1928, for $3485.00. Those five items aggregate $7321.00 and if it be said that the 7 checks show payments to the bank of trust funds on Peckham's personal debts to the bank, then, as insisted by the bank, we believe there should be deducted therefrom $7321.00 shown above, leaving a balance of $3429.00, only.

"Whether or not on the cross action those 7 checks or at least that balance of $3429.00 was chargeable to the bank as trust funds received by it on Peckham's personal indebtedness, with right of appellants to recover therefor, it is unnecessary for us to decide, since it is my conclusion that at all events appellants' demand therefor was barred by the statute of limitation hereinafter discussed."

The minority opinion, referring to the further operations in connection with the checking out of the funds in the commingled account, says:

"Peckham used a large sum of the trust funds to pay his personal obligations to the appellate bank and to Harrell and Basham, officials of the bank. Counsel for appellees in their briefs practicaly admit that same was slightly more than $7,000. Appellant contends it was more than $57,000. We shall not attempt to reconcile that diference."

Defendants in error say in their supplemental brief that:

"By carefully checking and rechecking, it will be found
that of this $57,000 not over $2,000 may be traced
2192 to moneys which he took from the Wichita Roy-

alty Company account and placed in his own account and then subsequently applied upon his indebtedness."

It appears conclusively that shortly after Peckham began making the transfers of Trust funds to his personal account he began making payments on his personal indebtedness to the Bank out of the commingled funds. It is undisputed that on October 8, 1925, Peckham made his first transfer of Trust funds. On that date by a check made payable to the order of the Bank he transferred $5,500.00 from the Trust account into his personal account. There is no evidence of any balance standing to his credit in his account at that time, or of any other deposit of funds credited to his account between the date of the transfer and November 17, 1925. On the last named date Peckham made his first payment out of his personal account to be applied on his personal indebtedness to the Bank.

The rule that the acceptance of payments from trust funds by a creditor to be applied on its debt establishes actionable participation by the creditor in the wrongdoing of the debtor, is definitely established and recognized in this State, as well as in other jurisdictions and by leading text writers. U. S. F. & G. Ry. Co. vs. Adoue & Lobit, 104 Tex. 379; Interstate National Bank vs. Claxton, 97 Tex. 569, 80 S. W. 604; Bischoff vs. Yorkville Bank, 218 N. Y. 106, 112 N. E. 759; Alien vs. Puritan Trust Co. (Mass), 97 N. E. 916; Massachusetts Bonding Co. 2193 vs. Standard Trust etc. Bank (111.), 166 N. E. 123,126; Havana Central R. R. Co. vs. Central Trust Co., 204 Fed. 546; State vs. American State Bank (Neb.), 187 N. W. 769; Ward vs. City Trust Co. (N. Y.), 84 N. E. 585; Bogerg, Trusts and Trustees, Vol. 4, Sections 907 912; Morse on Banks and Banking, (6 ed.), Vol. 1, Section 317; Perry on Trusts and Trustees (7 ed) Vol. 11, Section 828.

The rule is clearly recognized in the Claxton case, supra, by Justice Williams, speaking for the Court as follows:

"This case is to be distinguished from those in which a bank undertakes to acquire title to, an interest in, or benefit from a fund held in trust by a depositor. In attempting to acquire such a right or benefit the bank becomes a party to the action of the trustee and stands as any other person dealing with one holding property in a fiduciary capacity. The question of notice of the title of the person holding the property and his power over it arises, and a bank cannot any more than any other person acquire that which belongs in equity to another, if it have notice of his rights; and if it thus aid a trustee in diverting trust property from the beneficiary, it becomes liable as a wrongdoer."

Bogerg in the section of his recent work cited above states that:

"If a creditor of the trustee in his personal capacity, and not as trustee, * * * accepts from the trustee * * * commercial paper which runs to the 2194 trustee * * * as payee * * * in payment of the personal debt of the trustee, the creditor is deemed a participator in a breach of trust by the trustee if there was no authority to use the trust credit or paper for such private purpose."

In the same section the author states that the rule is applicable where the bank accepts in payment of its debt the trustee's checks drawn on an account known to the bank to contain both private and trust funds, citing, among other cases, U. S. F. & G. Co. vs. Adou & Lobit, supra, and Bischoff vs. Yorkville Bank, supra.

In the Adot & Lobit case the bank, after receiving payment of a debt owing to it by a fiduciary from a fund deposited with it by the fiduciary (guardian) in such

manner as to charge the bank with knowledge of its trust character, placed to the personal credit of the fiduciary the remainder of that fund in the sum of $5,000. Thereafter, the bank on the fiduciary's individual check paid out the remaining balance to this brother. Justice Ramsey, who wrote the very able opinion in the case, quoting therein from Gray & Johnson, L. R. 3 Eng. & Ir. Appl. cas. 1, as bearing upon the question of participation by the bank, says:

"It has been very well settled that, if an executor or a trustee who is indebted to a banker, or to another person having the legal custody of the assets of a trust estate, applies a portion of them in the payment of his own debt to the individual having that custody, the individual receiving the debt has at once not only abundant proof of the breach of trust, *but participates in it for his own personal benefit.*" (Italics ours)

2195

Justice Ramsey, speaking further for the Court in holding the bank liable says:

"The principal question in the case is, Were Adou & Lobit (a private bank) charged with notice of the trust character of the funds in question, *and were their acts and conduct in relation to same such as to render them liable?* This we think must be answered in the affirmative. Such was clearly the effect and fair purport of the decision of this Court rendered on the 22d of January, 1908, in the case of Moore v. Hanscom, 101 Tex. 293, 106 S. W. 876. The facts of that case, so far as essential to a decision by us now, are practicaly identical with the facts in the present record. It was there said: 'When Compton deposited in the bank of Adou & Lobit the sum of money due to the estate of Menard James, and the money was entered to the credit of A. J. Compton, guardian, the fund so deposited became the money and property of the ward's estate. Anderson v. Walker, 93 Tex. 119, 53 S. W. 821; Skipwith v. Hurt, 94 Tex. 322, 60 S. W. 423. Lobit testified that the bank would have paid the money on

presentation of the certificate of deposit by Compton, or by any person holding it with Compton's indorsement on it. Adoue & Lobit were notified by the fact that Compton made the deposit as guardian that the money belonged to the estate of the ward, and they
2196 would not lawfully pay it to any person except by Compton's order, and then only for the uses of the estate; that is, they could not have knowingly applied the money in their hands to the payment of any order made by Compton in any other character than that of guardian, nor could they have applied the money to the payment of any debt due from Compton personally to them or to any other person. * * * In the absence of *notice* or knowledge, a bank can not question the right of its customer to withdraw funds, nor refuse (except in the instances already noted) to honor his demands by check, and therefore, even though the deposit be to the customer's credit in trust, the bank is under no obligation to look after the appropriation of the trust funds when withdrawn, or to protect the trust by setting up a jus tertii against a demand. *But if the bank has notice or knowledge that a breach of the trust is being committed by an improper withdrawal of funds, or if it participates in the profits or fruits of the fraud, then it will be undoubtedly liable.*" (All italics in excerpt ours).

It will be noted that the Bank in the Adoue & Lobit case was held liable not only for that part of the trust funds received in payment of the fiduciary's debt, but also for the $5,000 thereafter checked out by him to another. The Court on rehearing expressly refused to give controlling effect to the bank's receiving part of the fund, basing the recovery of the $5,000 upon the sole ground that the act of the bank in placing the trust funds to the personal account of the fiduciary, whence they were
2197 checked out for other than a trust purpose, was "obviously wrongful" and that the bank "must bear the resulting consequences."

The Bank complains that the rule is harsh in view of the ratio between the amount of business transacted and the amount of Peckham's default, and urges that it did not have actual knowledge of the defalcations. It can not be heard to say after participation in Peckham's wrong to its own substantial advantage that the benefit received was relatively small, or that it was not consciously participating with him.

The facts are stronger against the Bank touching its participation with the fiduciary in the present case than in the case discussed. With frequency when the balance in the commingled account would reach the point where an overdraft was threatened, Peckham would make transfers of Trust funds in amount more than sufficient to cover, and would continue the issuance of checks which the Bank continued to apply as credits on his indebtedness and no obligations created by him for other than Trust purposes. It is not essential to liability on the Bank's part on the theory of participation that it have had actual knowledge, or for it to have colluded with Peckham to despoil the Trust. The record discloses conclusively that the Bank accepted payments to apply on Peckham's personal debts, and that it continued receiving such payments from the proceeds of his check
2198 drawn on his account containing Trust funds which he had commingled with his own.

The legal consequences of such transactions are clearly stated in Steere vs. Stockyards Natl. Bank, 113 Tex. 287, 256 S. W. 586, 258 S. W. 1042, a case upon certified question in which Herbert Graves' Commission Company was trustee for the owners of cattle sold on commission. One of the questions certified was whether knowledge of the bank that a part of the proceeds deposited by Graves in the course of his business as commission merchant was the proceeds of cattle sold for individual shippers, had the effect to place upon the bank the burden of ascertaining for itself the persons to whom the trust funds in fact

belonged, and hence render unauthorized the offsets made by the bank in liquidation of the Commission Company's overdrafts. The Court says:

"We are clearly of the view that the actual knowledge on the part of this bank that the Graves deposit consisted, *in part*, of trust funds placed upon the bank the burden of making inquiry before appropriating any of that deposit in payment of its own overdraft against Graves. If all of the Graves' deposit had belonged to the shippers, within the knowledge of the bank, the latter certainly could not have appropriated any of the funds to its overdraft against Graves. The bank, knowing the deposit contained trust funds, must separate the trust funds in said deposit from the Graves funds therein before it makes an appropriation from the deposit to pay the Graves overdraft. The funds were mixed by
2199 Graves. The bank knew they were mixed. Therefore, under a rule as old as the law itself, the entire deposit will be treated as trust funds except so far as the bank might upon inquiry, be able to distinguish the trust funds in said deposit from those therein belonging to Graves personally. In the case of Central Natl. Bank v. Connecticut Mut. Ins. Co., 104 U. S. 67, the Supreme Court of the United States quotes with approval the following:

'If a man mixes trust funds with his own the whole will be treated as the trust property except so far as he may be able to distinguish what is his own.'

"Before Graves or the bank could appropriate any part of the Graves deposit to the debt of Graves to the bank it was necessary that they take steps to ascertain what part of the Graves deposit belonged to Graves personally. In other words, actual knowledge on the part of the bank that much of the Graves deposit consisted of trust funds was sufficient to put the bank upon inquiry to ascertain just what part so consisted before using any part of it in payment of Graves' overdraft to it."

In the case of Bischoff vs. Yorkville Bank, supra, only two checks, one for $765 and the other for $1,000 were drawn on the account and applied to the debt due the bank. The bank received only $1765 to be applied on executor's debt to it, but was held liable for $12,000 principal, and $3,000 interest. It was held liable for every check drawn on the commingled account after
2200 it received the first payment on its debt, some of which were issued and presented more than 3 years after the first application so made.

The New York Court of Appeals in holding the bank liable says:

"In the present case Poggenburg paid to the defendant, as his creditor, on June 3, 1908, the sum of $765 from his account with the defendant. The finding of the Trial Court, supported by the evidence, is that the account at that time was constituted wholly from the trust funds. At that time and through the transaction the defendant knew that Poggenburg had appropriated $765 of those funds for his private benefit. The presumption that he would not thus violate his duty and lawful right—that he would apply the moneys to their proper purposes under the will—then ceased to exist. There was absolute proof in the possession of the defendant to the contrary. The defendant had no longer the right to assume that in paying the checks of Poggenburg it was paying the executor's moneys to the executor and not to Poggenburg, the individual, or that Poggenburg would use the moneys lawfully. It had knowledge of such facts as would reasonably cause it to think and believe that Poggenburg was using the moneys of the executor for his individual advantage and purposes. Those facts indicated that the payment to it was not an isolated incident; they indicated, rather, that it was within a method or system.
2201 Having such knowledge, it was under the duty to make reasonable inquiry and endeavor to prevent a diversion. Having such knowledge, it was charged

by the law to take the reasonable steps or action essential to keep it from paying to Poggenburg as his own the moneys which were not his and were the executor's, and was bound by the information which it could have obtained if an inquiry on its part had been pushed until the truth had been ascertained. It did nothing of that sort, and by supinely paying, under the facts here, as found, the subsequent checks of Poggenburg, it became a privy to the misapplication. It must now pay the plaintiffs the moneys of the estate which it had and received on and after June 3, 1908."

Bank vs. Claxton, supra, on the point involved by the Bank that a depositor, although holding the money in a fiduciary capacity, "may draw it out of the Bank ad libitum," is distinguishable from the present case in that there the agents were authorized to carry the trust funds in the bank in their names personally. Justice Williams in making the distinction says: "The present case is not one in which the deposit was made to the credit of the agents without authority." Other cases involving the same distinction are: Wagner Trading Co. vs. Battery Park Natl. Bank (N. Y.), 126 N. E. 347; Robbins vs. Passaic National Bank (Md.), 160 Atl. 418, 82 A. L. R. 1368; Underwood, Ltd. vs. Bank of Liverpool (1924), 1 K. B. 775; Chase & Company vs. Norkfork National Bank, 145 N. E. 725, 730; McIntosh vs. Detroit Savings Bank, 225
2202 N. W. 628, Wen Kroy Realty Co. vs. Public Natl. Bank & Trust Co., 183 N. W. 73; Singer Sewing Machine Co. vs. Citizens' Natl. Bank, 168 Atl. 32, 33; Ward vs. City Trust Co., 84 N. E. 585.

It is unnecessary for us to determine whether observance of the provisions of the Uniform Fiduciaries Act would necessitate the application of a different rule, as the Act has not been adopted by the legislature of this State. The rule applied has been established by the Supreme Court, and we recognize it as the better rule. Coleman vs. Bank, 94 Tex. 607, 63 S. W., 867, cited by the Court of Civil Appeals is distinguishable not only on

the ground that the agent there had the right to make the deposits in question, but also upon the ground that the bank did not participate in any misapplication of the trust funds. The cases relied on by counsel for the Bank, holding on the particular facts of those cases that liability can not be predicated upon the crediting of trust funds to the trustee's personal account, are distinguishable for the reason among others that in none of them was the transfer credited after the bank had been guilty of participating with the trustee in a known breach of trust. In the present case the Bank, after being charged with knowledge of Peckham's dishonest dealings, continued to credit Peckham's personal account with checks drawn on the Trust account, and persisted in its course of dealings with respect to the two accounts. Having
2203 incurred the burden of ascertaining whether subsequent expenditures made by the Trustee from the commingled funds were for authorized Trust purposes, it cannot effectively complain of the weight of that burden. Bogert, Trusts and Trustees, Sec. 912, supra, in concluding his discussion of the Yorkville Bank case, which he approves, says:

"On principle it would seem that an honest and diligent bank ought to refuse the tender of trust credit in payment of a personal debt of the trustee, or, if it can reconcile the acceptance of such credit with appropriate standards of ethics, it should at least notify the cestui of the trustee's conduct and refuse to carry the account further. If it is willing to go on transacting business with a representative known to be dishonest and is not willing to warn the cestui, it should bear the heavy burden of seeing to the honesty of his future acts."

The same thought is expressed by the Supreme Court in the Adoue & Lobit case in the statement that the Bank, "with knowledge of the trust character of the funds," having permitted "a diversion thereof and aided in appropriation of same to the trustee's personal debt," * * * "is and of right should be held liable."

Peckham as Trustee drew checks upon the commingled account aggregating $53,740.89 purporting to be in payment of oil royalties and oil properties purchased by the Trust. The transactions represented by this group of checks are those in which Peckham bought properties on his own account and later sold them to the Trust,
2204 sometimes at a profit to himself. Another group of checks issued by Peckham aggregates $55,-219.44. He caused voucher notations and trust book entries to show the application of these funds to be for the purchase and improvement of a town-lot enterprise known as Marlboro. A clear statement of the transactions of Peckham, Harrell and the Bank relating to this enterprise is made in the minority opinion of the Court of Civil Appeals. 74 S. W. (2) pp. 677-8. Peckham's deed purporting to convey the Marlborough property to the Trust was not delivered by Scannell, and title to the property was never accepted by the Trust.

Peckham received credit for checks aggregating $11,-250.00 which carried voucher statements that the proceeds were to be applied to the Trust notes to the Bank. They were not so applied, and the Trust received nothing for them. Items in the total sum of $12,048.00 were received by Peckham from the sale of Trust royalties, but the books showed the sale prices to be still receivable from the purchasers. Six thousand dollars was received also by Peckham through the Security National Bank item. All of these improper withdrawals and misapplications of Trust funds took place after the Bank had participated with Peckham by accepting Trust funds on his personal debts to the Bank and after Harrell was charged with knowledge thereof. Checks aggregating $10,055.42 were drawn by Scannell after Peckham's death, and as his successor. It was not necessary, in order to establish participation of the Bank and Harrell
2205 with Peckham, to show actual knowledge on their part of Peckham's purposes as they relate to the various transactions in question. Steere vs. Stockyards Natl. Bank, supra. The Bank and Harrell had

constructive knowledge of Peckham's dishonesty, and inquiry pursued with reasonable diligence would have disclosed the facts showing Peckham's lack of authority and breaches of trust. First Natl. Bank of Houston vs. Weiner, 253 S. W. 615; Miller & Co. vs. Hobdy, 169 S. W. 96; Carder vs. McPherson, 152 Fed. 951; Essex Natl. Bank vs. Hurley, 16 Fed. (2) 427.

Finally Scannell repudiated the transactions here in question, including those in which he himself acted as Peckham's successor, and concerning which he claims he had not at that time discovered either the true facts, or the rights of the stockholders. The cross action against the Bank and Harrell in which the repudiations are set up and tenders are made, was filed less than two years after Peckham's death.

It is the position of defendants in error with respect to Scannell's repudiation of Peckham's transactions, including those had with Harrell, that he had so conducted himself with respect thereto that he had no right to repudiate them, and that if he was not in position to personally complain, then the stockholders cannot assert their rights through him as their representative. Defendants in error also urge as defenses, ratification and limitation.

It must be borne in mind that as to the stock-
2206 holders the cause of action is not asserted by Scannell on his behalf and for all others similarly situated. Scannell, as Trustee, is asserting the facts set up in the cross action and in defense of the Bank's suit, as the representative of the stockholders, and in so doing acts in a representative capacity. As showing the distinction between the individual right of a trustee and his representative right in respect to his right to sue for the cestui que trustent, it is stated in Perry on Trusts (7 ed.) Sec. 122, Vol. 1, p. 178, that "the trustee also may recover the funds notwithstanding his own fraud." It was not only his right but his duty to assert the cross action for the trust estate to recover property disposed of in fraud of the trust. It is settled that one receiv-

ing property with knowledge that it is subject to a trust and that it had been transferred in violation of the trustee's duty, takes it subject to the rights not only of the cestui que trust, but also of the trustee, to reclaim possession. Mansfield vs. Wardlow, 91 S. W. 859. Also, a defrauded cestui que trust may recover property purchased with his funds, even though the agreement between the trustee and the purchaser was an illegal one and even though the trustee stands in a position where he cannot complain of the transaction. Chaves vs. Myer, 13 N. Mex. 368, 85 Pac. 233.

Defendants in error urge also that Peckham's acts were within his authority as Trustee, under his broad grant of powers as such.

2207 The sole source of Peckham's powers as Trustee and Scannell's powers as his successor, is the Declaration of Trust above referred to. Defendants in error, while not admitting they owed any duty of making inquiry as to the terms of the Declaration, invoke the broad powers conferred by it upon the trustee, and contend that Peckham as trustee, in view thereof, had in effect all of the powers of an owner in handling the Trust property. It is recognized generally that those who deal with a trustee, and have notice that he is only a trustee, are bound in law to know he is acting beyond his authority when he handles and uses the trust property as an owner and for his special benefit. Shaw vs. Spencer, 100 Mass. 382. Such use is contrary to the principle underlying the existence of trust relationship. Bogert, Trusts and Trustees, Vol. 1, Sec. 1, defines such relationship as "one in which one principal holds a property interest subject to an equitable obligation to keep or use that interest for another." It is stated in Reece vs. Medlock, 27 Tex. 120, that "it is a well settled principal that, when an agency is created and conferred by written instrument, the nature and extent of the authority given by it must be ascertained from the instrument itself." While it is true that under the terms of the Declaration the trustee is granted broad powers in respect to the

management of the business authorized to be transacted by him as trustee, we cannot agree that he is
2208 empowered to handle the property as an owner, or that he was privileged to do with it as he pleased. In Wen Kroy Realty Co. vs. Public Natl. Bank, 183 N. E. 73, the president of the corporation had unrestricted authority to manage its business and did not by any by-law or resolution of its Board expressly restrict that broad power. The Court held that the power conferred did not include the power to indorse corporation checks for personal purposes, and that where a bank accepts a check indorsed by the president, it is put upon inquiry to ascertain his actual authority to make the indorsement under the circumstances, saying:

"A power to act for another, however general its terms, or wide its scope, presupposes integrity and faithfulness in its exercise, and cannot be enlarged by implication or construction to the justification of a diversion to the use of the agent of moneys or property subject to the agency." statement of the "corrections and explanations" follows:

"The further statement that Scannell 'had charge of the office' of the Royalty Company in Wichita Falls is withdrawn. It is manifest from other portions of the opinion that Geo. W. Peckham was sole trustee of the company with supreme control of its affairs and the office of the company in Wichita Falls, and also its books and records kept by him in that office. Scannell was employed by Peckham as secretary and treasurer of the company, and, as testified to by him, he 'kept books, records, and did detail work for the Wichita Royalty Company'
2209 under supervision and direction of Peckham. Scannell was not a stockholder during that period, and Peckham's appointment of him as secretary and treasurer was therefore in violation of the provisions of the declaration of trust under which Peckham acted as trustee. And Scannell further testified that all he did was under Peckham's instructions, one of which was that

the books and records were to be kept in a safe, and that no one was to be allowed to see them. The statement that Scannell 'also made monthly reports to the 1,300 stockholders' was incorrect, since, according to his uncontroverted testimony, reports to the stockholders were made annually and not monthly, and were prepared by Peckham and mailed out by Scannell under his direction.

"Complaint is made of this further statement in the opinion:

"'Nor have appellants represented any complaint in behalf of the stockholders that the failure of Scannell to sooner seek recovery of damages claimed in the cross-action was prompted by fraud on his part and participated in by the bank.'

"That statement had reference to the cross action filed by Scannell for and in behalf of the Royalty Company, which, in the opinion of the writer, did not seem to embody any charge of fraud on his own part in his failure sooner to seek a recovery of damages claimed in the cross action. However, counsel for appellants have cited his testimony that, After George W. Peckham's death, he
2210 joined with W. H. Peckham, brother of George W. Peckham and with Harrell's assent thereto, in an agreement to conceal from the stockholders the fraud theretofore practiced by George W. Peckham, to the end that his estate might not suffer from the demands of the stockholders for damages based thereon."

The testimony is not undisputed in the particular that there was an "agreement to conceal," which is unimportant in so far as the question of ratification and limitation are concerned. It is undisputed that both Peckham and Scannell concealed the facts from the stockholders, and that the stockholders had no knowledge thereof. The stockholders were without knowledge or notice of any fact that concealment was practiced upon them, and they

were under no duty to check the conduct of Peckham, the Bank and Harrell. As expressed by Chief Justice Hickham, (now Commissioner) in reversing and rendering judgment for a principal in Security State Bank vs. Burton, (Tex Civ. App.), 10 S. W. (2) 201, 204, writ of error refused:

"No such duty (to check up the conduct of an agent) rested upon appellant. It had the right to rely implicitly upon the good faith of its agent, and owed no duty whatever to determine whether such agent was truly representing it."

Certainly this is true where, as here, there is no evidence that the cestuis had knowledge of any fact calculated to arouse inquiry on their part.

The protection the stockholders had a right to rely upon under the trust plan of operation agreed upon by them, however inadequate it may have been, was
2211 that the trustee would carry the property in his name as trustee, and that he would carry on the business of the Trust within the limits prescribed in the Declaration of Trust. The inadequacy of such protection in no way operated to relax or modify the duties imposed by law upon the Bank and its officers in dealing with Peckham.

Discussions of the questions touching the Trust's liability to the Bank on the notes sued upon has been postponed to this point, as the facts relating to the execution and indorsement thereof respectively can now be viewed in a clearer perspective.

The indorsement of the $14,596.00 note grew out of the Marlboro enterprise. Scannell was not authorized to represent and bind the estate in matters arising out of that venture; nor was there any consideration for his indorsement as Trustee. The Trust is therefore not liable, and the Trial Court should have instructed a verdict as to this note in favor of the Trust.

The $22,000.00 note was a renewal of the $15,000.00 note, dated January 18, 1926, and the $25,000.00 note dated March 1, 1926, less payments. Peckham deposited the proceeds of the loan in the Trust account, but the evidence raises the issues as to whether they were subsequently used respectively for other than Trust purposes. The Trust's liability upon the renewal note depends therefore upon a fact determination of whether the original loans respectively were made for the benefit of Peckham personally.

There has been no audit of Peckham's dealings, individually and as Trustee, with the Bank and Harrell, as reflected by the Trust account, his personal account and the books of the Trust, in the light of the governing principles herein pointed out. While these principles as applied tc the facts are determinative as a matter of law of most of the questions presented, their application can be more satisfactorily made through an audit of the books and account referred to, due to the fact that numerous items are involved and a vast amount of checking and cross-checking of items and amounts is necessary in order to arrive at the amount of the liabilities respectively of the Bank and Harrell to the Trust.

2212

It is apparent from what has been stated that the amount of the Bank's liability is the difference between the total amount of the deposits for which Peckham's personal account received credit after he began commingling Trust funds with his own on October 8, 1925, and the total amount of withdrawals therefrom which the Bank may show were used for authorized Trust purposes. It conclusively appears that the Bank is not entitled to credit for expenditures out of the commingled account for the purchase and improvement of Marlboro, or those transactions wherein Peckham acted in the dual role of buying as Trustee from himself personally.

It is necessary that the amount of Harrell's liability be differently ascertained, as he did not become obligated

to the Trust as depository for its funds. The
2213 Trust's primary contention as set forth in its brief in the Court of Civil Appeals was that Harrell was indebted to the Trust for $15,088.00 as a matter of law, and $84,587.23 as a question of fact. We have concluded that the Trust's subsequent contention that Harrell's liability arises by virtue of his actionable participation with Peckham in those transactions in which the latter continued to issue his checks upon the commingled account after knowledge of Peckham's infidelity was imputed to him, is correct. In January and March, respectively, 1926, Harrell cashed Peckham's check aggregating $15,088.00 in payment of a pre-existing indebtedness originating in Peckham's purchase from Harrell and Basham of the Stephens royalty. Such payments were made by means of checks issued by Peckham upon a personal account in which Harrell knew both Trust and personal funds were being deposited. Knowledge was thereby visited upon him of the trust nature of what he received in payment of Peckham's indebtedness. Harrell testified that "it was all alike" to him "whether the Trust account was carried in the name of Wichita Royalty Company or G. W. Peckham", but inquiry pursued with reasonable diligence by Harrell in connection with Peckham's subsequent dealings in which Harrell was also interested, including Marlboro, would have disclosed that Peckham was using Trust funds in purchasing an interest in, and in improving, that Addition. The measure of Harrell's liability to the
Trust is therefore determined as a matter of
2214 law, on the basis of his actionable participation with Peckham. The contention of defendants in error that the case was tried upon the theory that the Bank became an immediate converter upon the depositing of the Trust funds to Peckham's personal account, if granted, loses its force in view of the necessity for another trial. The amount of Harrell's liability to the Trust is the aggregate amount of trust funds paid

out on the transactions in question in which he was personally interested and which Scannell subsequently repudiated with tenders as pleaded and shown.

No basis exists for a judgment in favor of the Bank over against Harrell as prayed, as the Bank through Harrell as vice-president had the same character of notice of Peckham's unauthorized and dishonest dealings as was imputed to Harrell himself.

It is obvious that the Trust is entitled to judgment against the administrator of G. W. Peckham's estate as such for the aggregate amount of Trust funds used by Peckham for other than Trust purposes.

The remainder of the Trial Court's judgment being predicated upon its instructed verdict in favor of the Bank, it is necessary that such remainder be set aside, except that part thereof which discharges from liability Flora A. Kemp and Chas. I. Francis, executors under the will of J. A. Kemp, deceased. These executors were not impleaded by the Trust, which alleged Kemp was guilty of no wrong; but they were impleaded by Harrell and the Bank, who sought judgment over
2215 against them in the event of judgment in favor of the Trust in its cross action. We find no evidence of any actions between Peckham, as Trustee, and Kemp, in which Kemp was personally interested; nor have the Bank and Harrell pointed out any testimony calculated to arouse inquiry on Kemp's part as to Peckham's infidelity as Trustee. That part of the judgment directing that the executors of Kemp's will go hence without day should be affirmed, with costs incurred by them.

No demand having been made against either the Bank or Harrell prior to the time of filing the Trust's cross action, interest should be allowed on the respective recoveries from that date.

In view of another trial it is here pointed out that the various sums referred to herein are not stated as finalities but are used for convenience in identifying the transactions to which they relate.

We find it unnecessary, in view of the principles stated, to pass upon any other assignments.

The judgments of the Trial Court and Court of Civil Appeals on both the direct and cross actions are reversed and the case is remanded for another trial in accordance with instructions given herein, except that part thereof which finds in favor of the executors of Kemp's estate. As to said executors the part of the judgment denying recovery against them on Harrell's and the Bank's plea over, is affirmed, and judgment is here rendered that they recover their costs against the Bank and Harrell.

2216 (Signed) W. M. TAYLOR,
WMT/W Commissioner.

Opinion Adopted by the Supreme Court Dec. 11, 1935.

In The Supreme Court of Texas.

From Wichita County, Second District.

Wichita Royalty Company, et al., Plaintiffs In Error,
vs. No. 6800.
The City National Bank of Wichita Falls, et al., Defendants In Error.

On Motion For Rehearing.

It is an open question upon another trial of the case within the principles of law stated in the opinion on original hearing, whether the Bank first acquired knowledge of Peckham's dishonesty on November 17, 1925. This statement is made in view of the Bank's contention in its motion for rehearing with respect to the nature of the items constituting in the aggregate the $5500 transferred by Peckham from the Trust account into his personal account on October 8, 1925. It is undisputed from the facts disclosed by the present record that such a transfer was made by him, and there is no evidence that a transfer of funds out of the Trust account into

his personal account was made at an earlier date. Nor is it contradicted in the evidence that the payment made by him on November 17, 1925, to be credited
2217 on his personal indebtedness to the Bank, was made from his personal account which then contained funds transferred thereto from the Trust Account on October 8, 1925. It is not intended by anything said in the original opinion to foreclose upon another trial the question of whether the items contended by the Bank to constitute the $5500 were used for authorized Trust purposes; or to foreclose any purely fact finding that may be made from the evidence that may be adduced upon another trial. The suggestion in the original opinion that an audit should be made for use upon another trial, and the statement that the various sums therein referred to were not stated as finalities, were indicative of such intention. The statement perhaps should have included a reference to the various dates as well as sums. It is apparent from the undisputed evidence upon the former trial as to the date when Peckham began his system of transferring funds from the Trust account to his personal account, that the suggested audit should take at its beginning point a date not later than October 8, 1925. The principal aim of the original opinion is to set forth the principles of law applicable upon another trial.

In view of the contention with respect to the character of the items claimed by the Bank to make up the $5500 in question, reference is made to the discussion in the opinion on original hearing of the terms of the declaration of trust, beginning 89 S. W. (2d) 404, at (7, 8); and also to the principles of law set
2218 forth in the excerpt quoted from Steere v. Stockyards National Bank, 113 Tex. 287, 256 S. W. 586, 590, 258 S. W. 1042, cited in the original opinion, supra, p. 401.

The motion for rehearing is overruled

(Signed) W. M. TAYLOR.

WMT W

Opinion Adopted by the Supreme Court Commissioner April 8, 1936.

I, S. A. Philquist, Clerk of the Supreme Court of Texas, do hereby certify that the foregoing twenty-seven pages contain true and correct copies of the original opinion and opinion on motion for rehearing of the Supreme Court of Texas in Cause No. 6800, Wichita Royalty Company, et al., Plaintiffs in Error, vs. The City National Bank of Wichita Falls, et al., from Wichita County, Second District, as the same appear of record now on file in this office.

In Testimony Whereof, witness my hand and the seal of The Supreme Court of Texas, at Austin, This the 13th day of May, A. D, 1936.

(Seal) S. A. PHILQUIST, Clerk,
By J. P. RYRNE,
Deputy.

(Here followed order of the Supreme Court, which appears as Defendant's Exhibit 192 in this record.)

2219 Mr. Rogers:

I offer in evidence the voucher upon trust check No. 427, being marked "Defendant's Exhibit I" for the purpose of showing that it is entirely in original typing and not a carbon copy.

DEFENDANT'S EXHIBIT I.

Property No. 81, to purchase of one-fourth of the royalty on the east thirty acres of a seventy-one acre tract of land out of the D. Milligan Survey, Callahan County, Texas, $2,500.00.

Property No. 82, to purchase of one-eighth of royalty on east half section 4, B. B. B. & C. R. R. Co. Survey,

Certificate 682, 320 acres Archer and Young County, Texas, $1500.00. Additional interest. (Description not given) to be accepted upon approval of title, $1500.00.

2220 Mr. Rogers:

I also offer in evidence the following instrument marked "Defendant's Exhibit J":

DEFENDANT'S EXHIBIT J.

The Archer County Abstract Company,

E. H. Trigg, Manager,

Archer City, Texas.

Royalty Assignment.

C. W. Murchison, E. R. Fain, Chas P. McGaha, Trustees for Murchison & Fain Oil Co. to G. W. Peckham.

Dated: June 20th, 1925.

Filed: June 25th, 1925.

Recorded: Vol. 103, page 438.

Deed Records of Archer County, Texas.

The State of Texas,
County of Wichita.

Know all Men by These Presents: That We, C. W. Murchison, E. R. Fain and Chas. P. McGaha, trustees of Murchison & Fain Oil Company, a Trust Estate, of Wichita County, Texas, for and in consideration of the sum of Ten & No/100 Dollars ($10.00) cash in hand paid, by G. W. Peckham, hereinafter called grantee, the receipt of which is hereby acknowledged, have granted,

sold, conveyed, assigned and delivered, and by these presents do grant, sell, convey, assign and deliver unto the said grantee, an undivided 1/128 interest in and to all of the oil, gas and other mineral in and under, and that may be produced from the following described land, situated in Archer County, Texas, to-wit:

2221 The south Sixty acres of the West eighty acres of Block No. 22, Anderson South Pasture Subdivision. The North twenty-five acres of the east fifty acres of the west one hundred acres Block 19, Anderson South Pasture. The east sixty acres of the west one hundred sixty acres of Block No. 19, Anderson South Pasture subdivision.

Together with the right of ingress and egress at all times for the purpose of mining, drilling and exploring said land for oil, gas and other minerals, and removing the same therefrom.

Said land being now under an oil and gas lease executed in favor of Cullum & Associates, 60 ac; Prairie Oil & Gas Co. 40 ac; Weldon 25 ac; and Constantin 20 acres. It is understood and agreed that this sale is made subject to the terms of said lease, but covers and includes one-sixteenth of all of the oil royalty and gas rental of royalty due and to be paid under the terms of said lease.

To Have And to Hold the above described property, together with all and singular, the rights and appurtenances thereto in anywise belonging, unto the said grantee herein, his heirs and assigns forever; and grantors do hereby bind themselves, their successors and assigns, to warrant and forever defend, all and singular, the said premises, unto the said grantee herein, his heirs and assigns, against every person whomsoever

lawfully claiming or to claim the same or any part thereof.

2222 Witness our hands this the 20th day of June, 1925.

C. W. MURCHISON,
E. R. FAIN,
CHAS. P. McGAHA,
Trustees for Fain-McGaha Oil Co.

Witnesses: .....

$6.00 Revenue Stamps attached and canceled.

The State of Texas,
County of Wichita.

Before me, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared C. W. Murchison, E. R. Fain and Chas. P. McGaha, trustees of Murchison & Fain Oil Company, a Trust Estate, known to me to be the persons and officers whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said Murchison & Fain Oil Company, a Trust Estate, and that they executed the same as the act of such Company, for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office, this 20th day of June, A. D, 1925.

(Seal) PAULINE ENGLISH,
Notary Public, Wichita County, Texas.

The State of Texas,
County of Archer.

We, The Archer County Abstract Company, do hereby certify that the above and foregoing is a true and correct copy of royalty Assignment from C. W. Murchi-
2223 son, et al to G. W. Peckham, as the same appears of record in Vol. 103, page 438, of the deed records of Archer County, Texas.

To Certify Which Witness Our Hand And Seal, On this the 26th day of February, A. D, 1937.

THE ARCHER COUNTY
ABSTRACT COMPANY.

(Seal) By E. H. TRIGG,
Manager.

Filed 9th day of April, 1937.

GEO. W. PARKER,
Clerk.
By ELIZABETH HALL,
Deputy.

2224 (The following is a transcript of the proceedings had upon the hearing on the matter of the confirmation of sale of assets of the Wichita Royalty Company, this hearing being held at Dallas, Texas, before Honorable William H. Atwell, United States District Judge on June 10, 1937.)

Leslie Humphrey appearing for the confirmation. Guy Rogers, opposed.

Mr. Rogers:

If Your Honor please, carrying forward the objection made at the time of the entry of judgment, the Wichita Royalty Company objects to the confirmation of this sale, and has filed a pleading, which I will now read to Your Honor:

(Whereupon the objections were read.)

Mr. Humphrey:

Of course, Your Honor, the stockholders of the old bank, at a stocknolders meeting, directed the sale of these assets—I can speak for most of them, I think about 7,500 shares out of a total of 10,000, were present, and they asked that the sale be confirmed.

E. A. DEATON, being first duly sworn, examined in chief by Mr. Humphrey, testified as follows:

My name is E. A. Deaton. I was appointed special master by the Court to conduct this sale. I am also liquidating agent of the City National Bank of
2225 Wichita Falls, and have had charge of the liquidation for several years. I have furnished the Court a schedule of the assets of the old bank attached to my report, and that is a true and correct schedule of the assets, with the book value shown as distinguished from the cash value. I advertised this property as shown by my report, for four weeks, and I sold all of the assets at the Courthouse door in Wichita Falls on the first of June, 1937. The purchaser of the assets was the City National Bank in Wichita Falls, there were no other bids, they made a bid of $184,000.00, which is the total amount of the debt that the old bank owed to the City National Bank in Wichita Falls. There are no other debts owing by the old bank except this contingent liability, and possibly one or two other small contingent liabilities. In other words, the old bank will be fully liquidated, as far as this is concerned, from this transaction, as far as its records and books show.

I am familiar with these assets, and in my judgment the price paid was a fair and adequate price. The assets consisted largely of unsatisfactory notes, outside of the stock of the new bank. I have listed here the stock of the new bank, $107,500.00. Its value is par—book value—just as we have it set up. They have made arrangements, on the confirmation, to replace this stock at par. It also has $5,500.00 in cash, then chips and whetstones, various sorts, $104,000.00, and notes o. $307,000.00.

2226 Cross Examination.

By Mr. Rogers:

I do not know the exact date that the old bank acquired the stock in the new bank, but it was recently,

since the taking of the testimony in the main case. When the main case was tried on its merits, the old bank did not then own any stock in the new bank. I will give you the circumstances, the stock was pledged to the old bank on the note of the City National Bank, the stock was owned by the City National Bank and we sold it under that pledge and acquired title to it.

There has not been any substantial change in the value of the assets of the old bank for the past several months. I think they are worth as much now as they were when the evidence was taken before the examiner. There has been no assessments on the stock of the old bank.

This $307,000.00 of notes that are listed, are not readily collectable, some of them are because they are secured; I see here two notes of E. P. Bomar, secured by real estate are collectable, but they are for only five hundred dollars. I see one here on George A. Alexander, $2,788.00, he is an oil man in Wichita and that is not collectable at this time. Also a note here of J. M. Baker, $8,500.00, he is a real estate man, those notes can be worked out in time. Mr. Basham, formerly connected with the City National Bank owes $14,000.00, and that is not collectable. Also A. H. Britain is a lawyer in Wichita Falls, he owes $2,000.00 and has suf-
2227 fered financial reverses and that is not collectable, it will be a workout on that note. That is true generally with most of these notes. With most of these notes, it may be that over a period of time we may be able to collect a portion of them, or a substantial part. I see here a note of J. M. Golson, of Lubbock, he is a merchant, and we have a judgment against him, also another note of $5,500.00 against an oil man, that is about the same situation. Most of these notes, the makers are not able to pay. We have been pressing the collections, and making every effort to collect them, and kept them renewed so they will be collectable and probably paid some day. Most of these men are men of integrity and pay their debts when they are able to.

These notes are the leftovers of notes of the bank when it had an eight or ten million dollar loans.

I do not have any reason to believe that any more could be gotten for these assets than at this sale.

The Court:

I do not see any reason why the sale should not be confirmed, and you may draw an order.

Mr. Rogers:

We wish an exception to the confirmation of the sale.

2228 It is agreed by and between counsel for the respective parties hereto that the above and foregoing is a full, true and correct statement in narrative form of the evidence adduced and proceedings had upon the hearing of the above numbered and entitled matter, and that the same shall be filed as a part of the record herein.

GUY ROGERS,
Atty. for Wichita Royalty Co. & E. E. Scannell.
T. R. BOONE,
Atty. for J. T. Harrell.
ARCH DAWSON,
(For Peckham).
Attorneys for Defendant.
LESLIE HUMPHREY,
TARLTON MORROW,
Attorneys for Plaintiff.
LESLIE HUMPHREY, &
TARLTON MORROW,
Attys. for Interpleaded Defendants.

The above and foregoing having been agreed to by counsel, is hereby approved and ordered filed as a part of the record herein. July 3, 1937.

WM. H. ATWELL,
Judge.

2228a Statement of the evidence filed in U. S. Dist. Court July 3, 1937.

(Title Omitted.)

Being pages 351 to 1921 inclusive sent herewith in four separate volumes, to be Included in the Transcript at this place.

2229 OPINION OF THE COURT.

Filed in U. S. Dist. Court April 9, 1937.

(Title Omitted.)

This case has its birth in a trust executed in 1920 by R. R. Robertson, and filed in Wichita County on August 27, 1920. He resigned as trustee on January 2nd, 1923. G. W. Peckham was appointed by the District Judge of the Thirtieth Judicial District of Texas and continued until his death on the 7th of November, 1929. E. E. Scannell succeeded Peckham on November 12, 1929, receiving his appointment in the same manner. Scannell had been connected with the operations of the trust since Roberton's regime.

The general purpose of the trust was to buy and sell oil and gas royalties and other oil and gas properties. It provided for a million shares at a dollar each. About thirteen hundred people throughout the United States and distant from Wichita Falls became stockholders. The trust provided that there should be no liability as to the

stockholder and that he should have no right to do anything for the trust nor was he entitled to any property, but only to a division of profits and at the expiration of the term of the trust, which was to last for twenty years, to a division of principal and profits. It was to be managed by one trustee. All investments were to be in the name of the trustee as trustee, and all titles were to be so taken. The trustee was given authority to acquire any property necessary or proper for the purpose of the trust. Any demand on account of the operation and business of the trust was to be paid.
2230 The trustee was liable only for wilful and corrupt breach of trust and not for any honest error of judgment.

The complainant instituted a suit in 1930 in the State Court against the trust and its trustee, Scannell. It declared upon a $22,000.00 note, two $5,000.00 notes and a $23,500.00 note. Liens were asserted for their security. In February 1931, the trust and Scannell admitted Scannell's execution of the $22,000.00 note, but pleaded certain apologies therefor and claimed that it was executed upon certain representations and assurances of J. T. Harrell who was at that time an officer of the bank.

In February, 1931, the trust answered more fully and impleaded J. T. Harrell and made cross complaint against the bank for benefits alleged to have been received by that institution from trustee Peckham out of the moneys of the trust.

On February 25th, 1932, judgment was rendered for the plaintiff for the $22,000.00, also for $14,596.00 and against the defendant's cross action, and for the executors of the estate of J. A. Kemp, who was claimed to have been a silent partner of Harrell and Peckham, and who was dead.

On May 14, 1936, the cause having reached the Supreme Court of Texas where it was reversed, the mandate was received.

On June 18, 1936, the trust and Scannell, the latter as trustee, and as one of the thirteen hundred
2231 stockholders, amended and sought such remedies against the old bank, it having gone into liquidation in March, 1933, and its successor, the liquidating agent of the old bank, the stockholders of the old and the new banks, and the estate of Peckham, that application to remove, as an effort to wind up the affairs of a national bank, to this Court, was made, where, later on, a motion to remand was overruled. See, ... F., (s) P. .....

The cause was then repleaded and the Court having been advised by both parties that a commissioner would be advisable to take testimony, an order was accordingly made and T. C. Irby was so appointed.

Upon the trial something over 3,100 pages of testimony were introduced, filling nineteen volumes, as taken from ten witnesses. There were many exhibits, among which are 221 checks, of which only 72 appear to bear on the matters. In this record there are many repetitions and considerable confusion in the offering of the testimony. I mean by confusion, the same witness would be recalled at different periods and take up different transactions or treat the same transactions that had been developed by some other witness so that it has required considerable labor on the part of counsel and Court in sifting out the exact truth of the story. The pages for this story come out of the past and some of them were written fourteen years ago and most of them more than ten years ago. The chief actor, G. W. Peck-
2232 ham, is dead.

The transactions known as the Grimshaw Royalty, the Wilson Royalty, the White lease, the Routon Royalty, the South Anderson ranch, the Millner oil payment, the Curtis Lane property the Callahan Royalty, the Porter ranch, the Anderson ranch in Ellis County, Oklahoma, the Hartley county item, the Marlborough addition, and a Studebaker car, are the principal battle grounds. With reference to these Carson

and Lambert for the bank, and Wallace for the respondents, aided volubly by trustee Scannell, offered the bases for what must be taken as the proper solution. There are some aids to Carson and Lambert in Harrell and Bomar and Dickson's testimony.

Some of these properties the Court finds to have been taken in the name of Peckham. As to such as were so taken there were minute memoranda furnished to and inscribed on the records of the trust and in most, if not all instances, reported to the stockholders in periodical communications from the trustee. Such communications are shown in the record with the exception of one in June of 1926, which was the date of the first report after the acquisition of the Marlborough property. If it be conceded, which the Court does not find, that there was any profit to Peckham on either of the above transactions, except Marlborough, which
2233 is treated later, and one other small item, then and in that event the Court finds that the complainant in this case was not a party thereto and is not chargeable therewith. The trust made money for the stockholders, who have been paid something like 118% on their investment.

The Court further finds that after Peckham's death the succeeding trustee, Scannell, and Peckham's brother, who was the administrator of the deceased Peckham, agreed, after Scannell had discovered an alleged shortage of $19,000.00, that that amount could be paid out of Peckham's $100,000.00 life insurance and that nothing would be said about it. While this concealment was effective, and, observed, the Texas state statute requiring the filing and presentment of claims in the Probate Court having charge of the deceased estate, within ninety days, was probably tolled, but when the claim for that amount was filed in that estate the agreement to conceal was abrogated. After the disallowance of that claim by the Probate Court no proceedings were taken against Peckham's estate until this cross action was filed in 1936. The Texas statute and the decisions thereunder with refer-

ence to such matters bars the right to enter Court under circumstances of that sort, and, in truth, announce that the claim no longer exists—it is extinguished by such failure to act within the time. Art. 3522, Tex.,
2234 R. S., 1928. Therefore, whatever amounts may have been due by Peckham to the trust by reason of such transactions are not recoverable in this action, and this includes a profit of $4,000.00 alleged to have been made by Peckham in the Marlborough transaction.

Peckham kept his account in the old bank. That bank was also the depository for the trust. Peckham was an active operator in the oil fields and in the real estate world. His deposits in his individual account during the time of his trusteeship were more than a million and six hundred thousand dollars, and included hundreds of transactions. Under the trust he could have kept in his private account the funds belonging to the trust. There are no legal inhibitions to a trustee, empowered as here, to use himself as a conduit for either property or funds from strangers to the trust. Such a course is unwise and subjects each transaction to the critical scrutiny, not to say suspicion, of interested parties, particularly the Court. It must be borne in mind that in this trust the trustee had the widest powers, and was responsible not only for dishonesty and not for errors of judgment. He was bounden to ultimately fix the title to that which was required for the trust in himself as trustee. It would hardly be judicial to suggest that the time for such fixing is not itself fixed, but we may fairly say that the raising of eyebrows could be pre-
2235 vented by doing this upon the acquisition of the property.

The Court has been unable to find any dishonest transaction by trustee Peckham. The Court has found the payment of some of his indebtedness to the old bank out of funds of the trust. When a transaction of that sort takes place I think the bank had the burden of making inquiry. It is unnecessary to review the richness

of the authorities upon the question, but I do not agree that they are marshaled in accordance with the prevalent rule in the National Courts in the opinion of the Supreme Court in the first trial of the cause. The case of American Surety Company vs. Waggoner National Bank, from the Fifth Circuit, 83 F. (2) 99, which affirmed 13 F. (s) 295, seems to bear upon the questions here. Attention is also called to Empire Trust Company v. Cahan, 274 U. S. 473.

The opinion, in re Wichita Royalty v. City National Bank, 89 S. W. (2) 394, uses Bischoff v. Yorkville Bank, 213 N. Y. 106. Almost simultaneous with the decision in 89 S. W. (2) 394, was the decision of Quanah Acme & Pacific v. Wichita State Bank & Trust Co., 89 S. W. (2) 385. But the Supreme Court, in the Quanah case, 93 S. W. (2) 701, seems to have discarded the negligence rule as to the liability of depositories and to have grounded such liability upon the question of good faith.

But regardless of those cases the consensus of
2236 judicial opinion at the present time, in the absence of bad faith, seems to rest upon the facts which disclose business as ordinarily conducted. In other words, the bank was not charged with any duty to require Peckham to disclose where the funds came from that were in his personal account, nor to require him to account to it for the funds that were in the trust account, in the absence of any definite information as to illegal or improper deposits or withdrawals.

The trust puts its moneys and deposits at the disposition of the trustee Peckham. They were in his power. No one else had anything to do with them. No one else had any say about them. If he drew them out he could do so as he saw fit. Such notice as the bank had was notice only of this relation between the parties. The bank in permitting the trustee to draw out trust funds was only doing what the trust itself declared the trustee had a right to do and the bank was not bound to ask even if the deposit had been earmarked as a trust. The method or form of withdrawals is immaterial. They

could have been drawn out on the check of the trustee. All that need to be known under this branch of the law—considered reasonably and carefully—is whether the bank got the benefit of trust funds. If it did it is liable to respond, and the fullness of the rule just mentioned does not apply.

In Exhibit B to Wallace's testimony are fif-
2237 teen items, from June 22nd, 1923, to June 12, 1929, which he claims were payments to the bank out of trust funds on Peckham's personal debts. Another item of approximately $2,550.00 is also claimed. These total $13,281.59. Of these, four relate to salary checks which were manifestly his. The other items, save and except the sum of $1,807.11, which witness Lambert concedes and which witness Carson does not question, seem to be wrongly so placed. In weighing Carson and Lambert against Wallace I have taken into consideration the fact that Carson has gone into exhaustive detail—having spent many months in the examination, as has also Lambert. Wallace spent a much shorter time and seems to have been mislead, at any rate, to some extent, by confusion resulting from his determination to charge to Peckham, as improper withdrawals, approximately $30,000.00 in salary. There are conditions when salary will be denied a trustee. I do not find those conditions present in this case. I have been doubtful about the $2,550.00. When one is doubtful, and as doubtful as the maze of facts in this case causes, I believe the trust should be given the benefit of it in so far as it concerns a payment out of funds to the depository bank by the trustee on his own debt. That makes a total of $4,357.11, which I find to have been so improperly paid. This sum must bear, in justice, the same rate of interest that the bank
2238 was charging on the loan, to-wit, eight percentum, and it should begun to run January 1, 1926. This date is rather optional but it seems to be fair to all parties. The sum to be deducted from the $22,000.00, claimed by the complainant, is, therefore:

$8,278.50, which leaves a balance due it, on that note, of $13,721.50.

When the case went to the higher State Courts from the first trial trustee Scannell, and the trust, made certain claims against the bank by reason of the Marlborough transactions. That investment was one apparently outside of the sort of properties that the declaration authorized the trustee to deal in. But he dealt in good faith, insofar as showing such dealing in the records of the trust is concerned. It was not a good faith dealing insofar as he, himself, made a profit of $4,000.00, is concerned. Scannell claimed at that trial that a deed had been given to the trust by Peckham but that Peckham had cautioned him to keep it quiet and under his testimony it appeared not to have been a legal deliver.

Upon this trial that claim of Scannell's is thoroughly dissipated. The deed was not only discovered in the records of the trust, but a letter dated on April 10th, 1926, to the trust, signed by Peckham, upon the face of which were certain figures made by Scannell, at the time, evidently, clearly shows that there was nothing unfair or improper or concealed, save and except the highly wrong profit already mentioned. Under
2239 these newly discovered, and for a long time, concealed facts, there was a legal delivery of that deed.

There are other reasons that the record discloses for placing reliance where I have placed it.

The case of Connecticut v. Commercial National Bank, 87 F. (2) 968 by this Circuit, lays the correct rule as to the results that must follow a transaction between an unfaithful agent, as its binding effect upon his principal, and a third party. If the principal elects to retain results to the detriment of the third party justice requires that he take the transaction with its actual infirmities. This record does not satisfactorily disclose to the open mind any knowledge upon Harrell's part, the officer of the bank, in the Marlborough transaction,

or any other transaction for that matter, which imputes knowledge to Harrell which under this rule would be charged to his principal, the complainant in this case.

Under this rule of the bank's bounden duty to take notice when it receives benefit, even though Harrell be acquit of any impropriety, there was a direct benefit to the bank out of the $25,000.00 loan to the trust. It is unnecessary to recite the immediate details that followed the placing of that credit. They are sufficient to take from the complainant any right to recover here. It has not discharged the burden that rests upon it to make out its case by a preponderance of the testimony.

I do not mean to say it would figure out in exact
2240 pennies, but I do mean to say that the denial of its right to recover is proper. Likewise, there is no other merit in the cross action. The burden that rested upon the trust to show the chancellor has, likewise, been undischarged.

I have already indicated the record is unpardonably extended, and it seems to me appropriate that the decree should go that neither the complainant nor the respondent take anything, and that the costs shall be equally divided between the bank and the trust without costs as to the Peckham estate, Harrell, or any of the other natural persons.

WM. H. ATWELL,
United States District Judge.

Wichita Falls, Texas, April 9, 1937.

2241 FINAL JUDGMENT.

Filed and Entered April 9, 1937.

In the District Court of the United States for the Northern District of Texas, Wichita Falls Division, March Term, A. D. 1937.

City National Bank of Wichita Falls,
vs. No. 358 In Equity
Wichita Royalty Company, et al.

April 9, A. D. 1937.

This Day this cause came on to be heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, it was Ordered, Adjudged, and Decreed as follows, viz:

1. That The City National Bank of Wichita Falls take nothing against either Wichita Royalty Company, E. E. Scannell, individually and as trustee, Charles L. Black, Guy Rogers, individually and as trustee under the will of L. B. Rogers, deceased, W. H. Peckham, administrator of the Estate of G. W. Peckham, deceased, Humble Oil & Refining Company, Continental Oil Company, or The Texas Company, and that all relief sought by said The City National Bank of Wichita Falls, Texas, be and the same is hereby denied, and the Complainant's bill be dismissed.

2. That Wichita Royalty Company and E. E. Scannell, trustee, take nothing against either The City National Bank of Wichita Falls, The City National Bank in Wichita Falls, J. T. Harrell, individually and as trustee, E. Deaton, Liquidating Agent, W. H. Peckham, administrator of the estate of G. W. Peckham, deceased, Texas Investment Company, Hazel D. Peckham, William Peckham, George Peckham, Robert Peckham, L. H. Cullum,

Leslie Humphrey, Jack Jeffus, Oral Jones, Frank Kell, Joe Kell, J. J. Perkins, C. W. Snider, or F. P.
2242 Timberlake, and said cross complainants' bill of complaint be dismissed, except that the title to and possession of that land and those premises situated in Wheeler County, Texas, and being all that interest in the royalties and mineral rights in Wheeler and Gray Counties, Texas, standing in the name of G. W. Peckham, is hereby divested out of W. H. Peckham, administrator of the estate of G. W. Peckham, deceased, Hazel Peckham, William Peckham, George Peckham, and Robert Peckham, surviving children of G. W. Peckham, deceased, and invested in the Wichita Royalty Company and the cloud upon the title thereof is hereby removed.

3. That Wichita Royalty Company do have and recover of and from The Texas Company, Continental Oil Company, and Humble Oil & Refining Company the title to and possession of the proceeds of oil suspended by such respective parties to the account of the Wichita Royalty Company.

4. It is further ordered that the cloud cast upon the title of the properties and assets of the City National Bank of Wichita Falls, as well as the assets and properties of the City National Bank in Wichita Falls and the assets and properties of the Texas Investment Company, a corporation, by virtue of the filing and recording of the notice lis pendens of the cross bill of the Wichita Royalty Company in this cause, be removed.

5. It appearing to the Court that the City National Bank of Wichita Falls is in voluntary liquidation and is indebted to the City National Bank in Wichita Falls, a national banking association, in the sum of $184,000, as security for which there has been given a pledge of all the assets of the City National Bank of Wichita Falls, said pledge being given to J. T. Harrell, Trustee,

and that there are no other debts shown to exist against the City National Bank of Wichita Falls and that the affairs of said City National Bank of Wichita
2243 Falls should be completely wound up, administered, and the proceeds therefrom distributed to the creditors of said bank; the validity of said debt and pledge as between said banks is hereby established; E. A. Deaton is hereby appointed Special Master to sell, dispose of, and convey the assets of the City National Bank of Wichita Falls, after having given notice thereof in the time and manner as required by the rules of this Court and the statutes relating thereto, but conveyance of said assets by said Master shall be made only after report of said sale to this Court and a confirmation thereof.

It is further ordered that said Special Master give notice of said sale by making publication thereof in some newspaper published in the City of Wichita Falls, Texas, once a week for four consecutive weeks next prior to the date of sale, and that said sale shall be made at the Courthouse door in Wichita County, Texas, on the first Tuesday in any month after the publication aforesaid; that said sale shall be at public sale between the hours of 10:00 o'clock a. m. and 4:00 o'clock p. m. on said date and that the cross complainant, City National Bank in Wichita Falls shall be entitled to credit its debt against the purchase price bid for said property, and that said Special Master shall within five days from said sale report the same to this Court for confirmation. The Court retains jurisdiction to make such other and further orders herein, relating to the distribution of the fund and the winding up of the affairs of said bank, as may be necessary or proper in the premises.

6. The costs of this proceeding, including the costs of the Examiner, is equally divided between the complainant, City National Bank of Wichita Falls, and the cross complainant, Wichita Royalty Company and E. E.

Scannell, its Trustee, and that all other parties
2244 recover of said complainant and the cross complainant the costs incurred.

7. All appropriate process shall seasonably issue for the proper enforcement of this decree.

8. The complainant, City National Bank of Wichita Falls, and E. A. Deaton, Liquidating Agent, and the cross complainant, Wichita Royalty Company and E. E. Scannell, Trustee, except to this decree and said exceptions are hereby allowed and entered, and it is so ordered.

WM. H. ATWELL,
United States District Judge.

REPORT OF E. A. DEATON, SPECIAL COMMISSIONER.

Filed in U. S. Dist. Court June 5, 1937.

2245 (Title Omitted.)

To the Honorable Wm. H. Atwell, Judge of Said Court:

Now Comes E. A. Deaton, Special Commissioner appointed in the above cause to effect a sale of the assets of the City National Bank of Wichita Falls, Texas, and respectfully reports to the Court as follows, to wit:

I.

That pursuant to the decree of this Court of April 9, A. D. 1937, he caused to be published in the Wichita Daily Times, a newspaper of general circulation published in Wichita Falls, Wichita County, Texas, a notice of the sale as ordered by this Court, which sale was to be held on the first Tuesday in June, A. D. 1937, being the first

day of said month, and caused said notice to be published once a week in said newspaper, to wit, the Wichita Daily Times, a newspaper published as aforesaid, for four successive weeks prior to the date of said sale, the publication of the notice of said sale being on the following dates: May 8, May 15, May 22, and May 30, A. D. 1937.

II.

That pursuant to the decree of this Court of April 9, A. D. 1937, and pursuant to the notice of sale published thereunder, the undersigned, as Special Commissioner, did offer for sale in Wichita County, Texas, at
2246 the Courthouse door of Wichita Falls, Wichita County, Texas, beginning at 10:15 o'clock A. M., on June 1, A. D. 1937, all and singular the assets of the City National Bank of Wichita Falls, Texas, (now in liquidation) a detailed statement and list of same being attached to this report, marked Exhibit "A," and made a part hereof, together with all other assets, whether therein described or not, in anywise belonging to or pertaining to the City National Bank of Wichita Falls, Texas, (now in liquidation).

III.

That thereupon there was bid for said properties by the City National Bank in Wichita Falls the sum of $184,000.00 for the whole of said properties, which was the highest, best, and only bid submitted for said properties, and that the total amount of the bid for all and singular all of said properties was said sum of $184,000.00 and the sale was made at the Courthouse door of Wichita County, Texas, on June 1, A. D. 1937, at 10:15 o'clock A. M. on said date, and that said properties were thereupon struck off to the City National Bank in Wichita Falls, the highest and best bidder therefor, subject to the confirmation of the Court of said sale.

IV.

That the expense and costs of the proceeding, including the expense of advertising the sale but excluding any fees of the Special Commissioner in making the sale, is the sum of $9.50.

V.

That the City National Bank in Wichita Falls, pursuant to said judgment, being entitled to credit its debt against the purchase price bid on said properties, credited said bid thereon.

2247 A copy of the notice, as published, is attached hereto and made a part hereof.

Whereof, your Commissioner prays that upon a hearing of this report the same be accepted and that the sale be confirmed, and that he be directed to make a conveyance of the respective properties to the City National Bank in Wichita Falls, and for such other orders as the Court may direct.

E. A. DEATON,
Special Commissioner.

Sworn to and Subscribed Before Me, this 5th day of June, A. D. 1937.

MRS. GERTRUDE TURNER,
(Seal) Notary Public, Wichita County, Texas.

EXHIBIT "A".

Statement.

City National Bank of Wichita Falls,
May 29th, 1937.

Assets.

Cash in bank	$ 5,506.97
Loans and Discounts (list attached)	307,509.03
Real Estate (list attached)	104,557.76
Stocks— 100 sh. Bowers Oil Company	1.00
1075 sh. City Nat'l Bank in W. F.	107,500.00
2/384th Royalty inst.—155 ac. Gray Co. Texas	3,628.79
Notes sold under re-purchase agreement	2,744.36
Deficit	(655,296.45)
	$1,186,744.36

Liabilities.

Capital Stock	$1,000,000.00
Deficiency Notes	184,000.00
Notes sold under repurchase agreement	2,744.36
	$1,186,744.36

Loans and Discounts.

City National Bank of Wichita Falls.
May 29th, 1937.

Name	Amount		Maturity Date
Alexander, Geo. A., Jr.	$ 2,788.86		5- 5-37
Aulsbrook, C. J.	98.50		7- 7-33
Baber, J. M.	8,500.00		12- 1-35
Basham, C. E.	12,801.96		11-28-35
Basham, C. E.	1,232.82	$14,034.78	1- 4-37
Bomar, E. T.	250.00		2- 6-38
Bomar, E. T.	250.00	500.00	2- 6-39
Britain, A. H.	1,400.00		12-27-35
Britain, A. H.	600.00	2,000.00	6-27-36
Brown, Henry	8,539.82		12- 1-34
Burnett, I. E.	1,844.57		1- 1-33
Bynum, E. B.	362.00		7- 1-36
Carson, H. H.	100.00		3-10-37
Cearley, B. W.	193.96		10- 1-33
Chafin, E. V.	97.50		12- 1-35
Clark, S. H.	334.87		Mo. p'mts.

1938

Cochran, E. B.	188.20		2-11-36	
Cone, W. M.	324.48		7-20-36	
Cooke, M. M.	418.35		7-12-35	
Davis, A. L.	19.00		7-27-36	
Dickey, L. H.	441.48		Mo. Pmts.	
Evans, L. A.	591.80		7- 1-33	
Evans, L. A.	298.90		7- 3-33	End. C. E. Basham
Evans, L. A.	116.00		7-29-33	
Evans, L. A.	250.00		7-31-33	End. C. E. Basham
Evans, L. A.	130.08		9-30-33	End. C. E. Basham
Evans, L. A.	641.47		10- 4-33	
Evans, L. A.	7,201.64		10- 7-33	End. C. E. Basham
Evans, L. A.	250.00		10-30-33	End. C. E. Basham
Evans, L. A.	106.42		11-29-33	End. C. E. Basham
Evans, L. A.	4,344.79		12-29-34	End. C. E. Basham
Evans, L. A.	347.52	14,278.62	12-29-34	End. C. E. Basham
Ferrell, Wilson	78.95		12-12-33	
Floyd, W. E.	507.35		8-11-35	
G. I. Oil Company	3,101.74		7-27-35	
Gates Hereford Farm	604.00		12-28-34	
Geyer, Harry	24.00		8- 2-35	
Gholson, J. M.	4,609.09		6-10-35	
Grantham, Cleo W.	43.15		6-30-33	

Name	Amount		Maturity Date	
Green, W. J.	6,500.00		3- 9-41	
Grisham, W. J.	5,500.00		3- 8-37	
H. & H. Fuel Oil Company	348.82		5- 2-37	
Hampton, John W.	1,536.00		4-12-37	
Harding, E. P.	1,451.45		9-17-31	Judgment
Harris, Theodore	250.00		6-30-34	
Herndon, C. E.	500.00		8- 1-37	
Hines, Harry	547.00		2-27-37	
Hoffman, F. J.	600.00		12-31-37	
Holcomb, W. W.	91.30		6-21-33	
Huffines, W. C., assumed by C. E. Naylor	45.00		Out	
Jensen, Walter	102.50		5-18-33	
Kellow, S. R.	65.20		10- 7-34	
Kemp Estate	13,344.00		6-27-37	
Kemp Estate	8,752.16		6-27-37	
Kemp Estate	29,197.30		7-15-37	
Kemp Estate	66,405.61	117,699.07	7-15-37	
Kertz, L.	1,961.43		12-26-36	
King, Roy H.	1,396.35		6-19-35	
Kovarik, Jan	357.97		6-30-33	

Lee, J. F.	92.65		3- 1-34	
Logan, R. A.	10.00		9-14-36	
Marshall, Mrs. N. H.	155.85		1-30-33	Judgment
Mask, B. B.	143.50		9-18-36	
McCullough, R. W. H.	337.10		3- 7-34	Judgment
McKenzie, T. F.	624.10		8- 6-35	
McKenzie, T. F.	6,840.00	7,464.10	12- 1-36	
Miller Drug Store	945.00		8-25-32	End. Harrell & Cowling
Miller, W. E.	32.75		1-14-35	
Moss, T. J.	695.57		9- 3-34	
Mullins, R. L.	3,068.14		4-10-35	End. C. E. Basham
Mullins, R. L.	3,068.14		4-10-35	End. C. E. Basham
Mullins, R. L.	288.52	6,424.80	4-10-35	End. C. E. Basham
Myers, C. C.	79.00		6-22-35	
Myers, C. C.	300.00	379.00	1- 1-38	
Mytinger, J. C. Realty Company	1,200.00		10-15-38	
Nolen, Chas. W.	26.60		5-25-37	
North Texas Finance Corp.	1,399.55		5-23-35	
Norwood, E. W.	800.00		2- 5-38	
Paul Tex Oil Company	1,066.78		5- 9-32	End. J. M. Dodson
Riveer, M. M.	146.80		6-30-32	
Robertson, W. L.	100.00		7- 1-37	
Robertson, W. L.	100.00		8- 1-37	

Name	Amount		Maturity Date
Robertson, W. L.	100.00		9- 1-37
Robertson, W. L.	100.00		10- 1-37
Robertson, W. L.	100.00		11- 1-37
Robertson, W. L.	100.00		12- 1-37
Robertson, W. L.	100.00		1- 1-38
Robertson, W. L.	100.00		2- 1-38
Robertson, W. L.	100.00		3- 1-38
Robertson, W. L.	100.00		4- 1-38
Robertson, W. L.	100.00		5- 1-38
Robertson, W. L.	11,176.32	12,276.32	6- 1-38
Robinson, James R., Jr.	504.79		8- 1-34
Robinson, James R., Jr.	3,996.67		8- 1-34
Robinson, James R., Jr.	94.60		3- 6-35
Robinson, James R., Jr.	86.90	4,682.96	3- 4-36
Saye, Frank	50.00		8-21-36
Schambs, Edward A., Jr.	68.63		10-14-33
Smith Estate, C. C.	995.70		9-24-35
Staber, Fred	2638.56		4-23-35
Stone, Jerome S.	11,402.38		6- 1-35
Stone, Jerome S.	20,400.00	31,802.38	6- 1-35
Stone, L. T.	200.00		2- 9-36

Texas Investment Company	421.28		10- 9-35	
Texas Investment Company	1,478.51	1,899.79	10-25-36	
Thornberry, H. T.	965.00		10- 5-35	
Thornberry, H. T.	2,947.20	3,912.20	11-15-35	
Turner, W. E.	277.30		2- 1-34	End. W. J. Mangum
Wehba, Katha	100.40		12-15-35	
Welch & Richardson	500.00		1-25-35	
Wichita Royalty Company	22,365.93		8-25-30	
Williams, Sam	122.70		4-17-33	
Woodall, D. B.	910.75		7-28-37	
Yancey, J. S.	2,400.00		3- 3-38	
Total	$307,509.03			

2251

Real Estate Owned by City National Bank of Wichita Falls, May ...., 1937.

Description	Book Value	Prior Lien
Outer Blk. #25, Burkburnett, Texas, acquired from T. A. Zimmerman 1917. Owned in fee and producing approximately $275.00 oil royalty per year ..... $	1.00	None
320 acrs. land, no improvements, Andrews Co., Texas, acquired from Eugene Sherrod 1929, 1/2 under lease to Gulf at 50c per acre, lease expiring 1938	1.00	$624.00
Lot 14, Blk. 3, Hillcrest Add. to Plainview, Texas, acquired from E. E. Squires 1920	200.00	None
An und. 1/4 int. 10 acrs. with 4 room frame house, Iowa Park road, acquired from J. M. Baber in 1920, remaining 3/4 int. formerly owned by C. E. Basham, now owned by Wag. Nat. Bank, Vernon. Several hundred dollars delinquent taxes due	1.00	Taxes
50 acrs. on old Burk road, formerly refining site, acquired from Southwest Ref. Co. 1933	14,771.30	None
143 acrs. of land, some improvements, Kit Carson Co. Colo. acquired from L. Steinberger 1933 (Power Bank Company Collateral)	3,200.00	None

Description	Book Value	Prior Lien
36 acrs. unimproved mesquite land, Wichita Co. about 8 miles on Seymour road, acquired from W. S. Curlee 1933	1,020.00	None
10 acs. unimproved land about 5 miles from W. F. on old Iowa Park road, acquired from H. G. Helgerson, 1933	1,000.00	Taxes
Vacant lot 2607 Kemp Blvd. W. F., acquired from J. C. Clower 1929	100.00	None
An undivided ¼ int. in lots 6 & 7, Blk. 182, Orig. Cor. 10th & Ohio (¾ int. owned by Kemp Estate) Our part of rent about $75.00 per year	5,000.00	None
124.61 acrs. unimproved land about 3 miles east W. F. on Petrolia Road	10,673.82	Taxes
Blks. 9, 10, 14, 15, 16 and 21, in Unit 1 Petrolia Gdns., all unimproved	3,600.00	None
S½ Blks. 17 & 18, Petrolia Gdns. Add. with 5 rm. frame house in fair condition	2,400.00	None
5 acs. unimproved land Tyson Subdiv. East of W. F.	500.00	None
Vacant lot on Oriole St. W. F.	50.00	None
1417—24th St. W. F. 50 ft. lot with 4 rm. frame house in bad condition	1,500.00	None
1309 Lamar St. W. F., 70 ft. lot with old 6 rm. house in bad condition, R. R. Trackage in rear	6,511.66	None
4 vacant lots on Kentucky St., W. F.	400.00	None
4—25 ft. lots in Blk. 90 O. T. acquired from Hubert Harrison (Delinquent taxes more than value of lots)	1.00	None

Description	Book Value	Prior Lien
6986 acs. of grass land Dallum Co. no improvements except fencing and 2 wells, acquired from S. G. Helm	50,154.00	29,000.00
An undiv. ½ int. 160 acs. unimproved land Archer Co. about 1 mile NW of Holliday, acquired from Otto Stehlik ...	3,750.00	Fed. Land Bank & Taxes
80 acs. unimproved public Sch. land Hudspeth Co., Texas, acquired from H. W. Powell 1934	1.00	State of Texas & Taxes
35.9 acs. unimproved land about 1 mile N. of W. F. and 60 acs. unimproved land about 5 miles W. of W. F. acquired from Fritz Hendrich	1.00	None
	$104,836.78	
Less 1/10th int. 200 acrs. near Burkburnett (our int. being in Fee and Mineral, with approx. $50.00 royalty per yr.)	279.02	None
	$104,557.76	$29,624.00

WICHITA ROYALTY COMPANY'S OBJECTIONS TO REPORT OF SPECIAL COMMISSIONER.

Filed in U. S. Dist. Court June 10, 1937.

2253 (Title Omitted.)

Wichita Royalty Company and E. E. Scannell, Trustee, herein called Cross Complainants, protest the confirmation sought by complainant bank of the special commis-

sioner's report of sale, and for objection thereto would show:

1. Cross complainants are without information as to the true value of the assets of complainant bank which are reported to have been sold by the special commissioner to the City National Bank in Wichita Falls, but allege that the record in this cause discloses the testimony of the president of both banks to be upon the principal hearing that the assets of the old bank were sufficient if permitted orderly to work out, to discharge all of the liabilities of the old bank including the judgment sought against the said bank by cross complainants.

2. Cross complainants say that if the assets sold were of but the value bid therefor at public sale, and if the City National Bank in Wichita Falls as an alleged creditor of the old bank be permitted to receive said properties in cancellation and discharge of said alleged indebtedness, and if complainants be finally successful in obtaining judgment herein as prayed for, that the confirmation of sale would result in further preferring the City National Bank in Wichita Falls as a creditor of the old bank to the irreparable injury of cross complainants.

3. Cross complainants further say that the stock holders of the old bank and new bank are not identical
2254 and if cross complainants ultimately prevailed in obtaining the judgment sought and are relegated to the enforcement thereof to the super added liability of the stock holders, that the stock holders of the old bank themselves would be prejudiced to the benefit of the stock holders in the new bank. In this connection it is shown that the stock holders in the new bank are for the most part active officers and directors of the two banks, whereas the stock holders of the bank includes as well many other individuals.

4. Cross complainants would further show that the old bank has been in liquidation for more than four years; that a final judgment will be rendered herein within approximately six months from this date, and no one would be injured should the Court refuse to confirm the sale, or should the Court require as a condition of confirmation the payment of $184,000.00 in cash rather than as a credit, or should the Court make the confirmation subject to the affirmance of the judgment herein upon appeal.

Wherefore cross complainants pray that the sale above mentioned be not confirmed and in the alternative that if it be confirmed, it be confirmed only upon the payment of the bid in cash; and in the further alternative that the confirmation be subject to and defeated unless the judgment heretofore rendered herein be affirmed on an appeal and for general equitable relief.

KILGORE & ROGERS,
Attorneys for Cross-Complainants.
By GUY ROGERS.

ORDER CONFIRMING REPORT OF E. A. DEATON, SPECIAL MASTER.

2255 Filed and entered June 10, 1937.

(Title Omitted.)

On This the 10th day of June, A. D. 1937, came on to be heard the report of E. A. Deaton, Special Master, filed herein on the 5th day of June, A. D. 1937, of the sale of the assets of the City National Bank of Wichita Falls, Texas, a national banking association, the plaintiff, City National Bank of Wichita Falls, appearing by Leslie Humphrey, its attorney, the defendant Wichita Royalty Company appearing by Guy Rogers, its attorney, and E. A.

Deaton, the Special Master, appearing in person, and said report being heard, together with the evidence thereon, and it appearing to the Court that due and proper notice of the sale ordered by this Court in the decree of April 9, A. D. 1937, was given by the Special Master and that the sale was conducted at Wichita Falls, Texas, on the first day of June, A. D. 1937, being the first Tuesday of said month, by the Special Master in accordance with the decree of this Court of April 9, A. D. 1937, and that the sale was in all things fairly made and that the bid accepted and recommended by the Special Master in his report is the highest and best bid made for said properties offered by the Special Master, pursuant to the Court's decree herein, and that the report of sale should in all things be confirmed:

It Is, Therefore, Ordered, Adjudged, and Decreed by the Court that the sale as made by the Special Master of all of the properties set forth and described in the list marked Exhibit "A" attached to said report, together with all other assets, whether therein described or not, belonging to the City National Bank of Wichita Falls, be in all things approved and confirmed and that the title to said properties is hereby confirmed and vested in the City National Bank in Wichita Falls, free and clear of all rights, claims, and liens whatsoever asserted by the Wichita Royalty Company, defendant herein, and the Special Master is directed forthwith to execute and deliver to the City National Bank in Wichita Falls a deed, conveyance, and bill of sale to said properties free and forever discharged of any right, claim, or interest of the defendant Wichita Royalty Company and/or E. E. Scannell, its Trustee.

2256

It appearing that the City National Bank in Wichita Falls was the successful bidder for said properties and bid the sum of $184,000.00, the amount of its bid being credited in accordance with the decree of this Court of April 9, A. D. 1937, upon the indebtedness owing to said

City National Bank in Wichita Falls by the City National Bank of Wichita Falls, said credit is allowed and confirmed.

It Is Further Ordered that the City National Bank of Wichita Falls, plaintiff herein, be and is hereby directed, through its proper officers, to join in the conveyance by the Special Master of the assets aforesaid.

To the action of the Court, the defendants, Wichita Royalty Company and E. E. Scannell, its Trustee, in open Court duly excepted, which exception is allowed & entered.

WM. H. ATWELL,
United States District Judge.

PETITION FOR THE ALLOWANCE OF AN APPEAL

2257 Filed July 3, 1937.

(Title Omitted.)

To said Honorable Court:

The cross-complainants Wichita Royalty Company, a Trust Estate, and E. E. Scannell, Trustee, conceiving themselves aggrieved by the order and decree made and entered on the 9th day of April, A. D. 1937, in the above entitled and numbered cause, particularly by that portion thereof wherein cross-complainants were denied recovery against the City National Bank of Wichita Falls, The City National Bank in Wichita Falls, J. T. Harrell, individually and as trustee, E. A. Deaton, Liquidating Agent, W. H. Peckham, Administrator of the Estate of G. W. Peckham, deceased, Texas Investment Company, Hazel D. Peckham, William Peckham, George Peckham, Robert Peckham, L. H. Cullum, Leslie Humphrey, Jack Jeffus, Oral Jones, Frank Kell, Joe Kell, J. J. Perkins, C.

W. Snider, and F. P. Timberlake, and cross-complainants' Bill of Complaint dismissed, and wherein Lis Pendens Notice filed by cross-complainants was removed as a cloud upon the title and properties of the City National Bank of Wichita Falls and the Texas Investment
2258 Company, and wherein an indebtedness alleged to be due the City National Bank in Wichita Falls by the City National Bank of Wichita Falls was adjudicated to be $184,000.00, with foreclosure of an alleged lien upon the assets of the City National Bank of Wichita Falls, and directing the sale thereof, as well as the Court's confirmation of the sale made pursuant to said judgment, and wherein half of all costs incurred in the proceeding, including the costs of the Examiner, were taxed against cross-complainants, and likewise feeling aggrieved by the Court's overruling an original and an amended Plea to the Jurisdiction and Motion to Remand, do hereby appeal therefrom to the Circuit Court of Appeals for the Fifth Circuit for the reasons specified in the Assignment of Errors which is filed herewith, and they pray that this appeal may be allowed and that an order allowing the appeal be duly signed and that a citation be issued, directed to the above named parties against whom these cross-complainants sought relief, commanding them to appear before the Circuit Court of Appeals for the Fifth Circuit to do and receive what may appertain to justice to be done in the premises; and further that a transcript of the record, proceedings and papers upon which said orders and decree were made be duly authenticated and be sent to the Circuit Court of Appeals for the Fifth Circuit. Cross-complainants further pray that a proper order be made by the Court relating to the security required of them on this appeal.

KILGORE & ROGERS,
By GUY ROGERS,
Solicitors for said Cross-Complainants.

2259 ASSIGNMENT OF ERRORS.

Filed July 3, 1937.

(Title Omitted.)

Come now Wichita Royalty Company and E. E. Scannell, Trustee, cross-complainants in the above entitled and numbered cause, and in connection with their Petition for the Allowance of an Appeal in this cause assign the following errors which said cross-complainants (appellants on this appeal) aver occurred in the trial of this cause and in the rendition of the final decree herein and on which they rely to reverse said decree and the orders entered of record in said cause:

I.

The District Court erred in retaining jurisdiction of this cause and in failing and refusing to remand the cause to the State Court from which it was removed.

II.

The District Court erred in overruling cross-complainants' Original Motion to Remand the Cause to the District Court of Wichita County, Texas, from which it was removed.

2260 III.

The District Court erred in overruling the Amended Motion to Remand the Cause to the District Court of Wichita County, Texas, from which it was removed.

IV.

The District Court erred in rendering the final decree herein in that the pleadings and the record herein show that jurisdiction of the cause is exclusively vested in the

District Court of Wichita County, Texas, and that the cause was not removable to the District Court of the United States.

V.

The District Court erred in holding that cross complainants' Third Amended Answer and Cross-Action was in effect a suit to wind up the affairs of a failed national bank.

VI.

The District Court erred in holding that the cross-complainants' Third Amended Original Answer and Cross Action presented a controversy arising under the laws of the United States and for that reason removable from the State Court.

2261

VII.

The District Court erred in denying cross-complainants the recovery sought by them on their cross-bill against the City National Bank of Wichita Falls, referred to in the record as the old bank, and in dismissing their said cross-bill of complaint in this: Cross-complainants' suit was for the recovery of the deposit balance of Wichita Royalty Company, a trust estate, in said bank, and to recover losses suffered by said trust estate on account of the said bank's participation with one Peckham, a former trustee of the Wichita Royalty Company, in breaches of trust, and for an accounting; and it was proven upon the trial of this cause that said bank was a depositary of funds belonging to said trust estate and of the funds belonging to said trustee, Peckham, and that with knowledge and notice of his wrongful purpose, it permitted the said trustee to transfer large sums of money from the trust estate to his personal account and to disburse them for unauthorized trust purposes, some to pay the bank his

personal debts and some for the purpose of paying officers of the bank, including its president, his individual debts to said officers, and the remainder for unauthorized trust purposes; and it was further proven that the said bank had full knowledge and notice that said transfers were unauthorized and had full knowledge and notice of said improper and unauthorized disbursement of trust funds and of said breaches of trust and participated with the said trustee in his breaches of trust and was in part the beneficiary of said breaches of trust; and that upon an accounting the said cross-complainants were and are entitled to a recovery against said bank on account of its participation in said breaches of trust amounting to $110,225.88, with interest.

2262 VIII.

The District Court erred in denying cross-complainants the recovery sought by them on their cross-bill against J. T. Harrell and in dismissing their said cross-bill of complaint in this: Cross-complainants' suit was for the recovery of a deposit balance of the Wichita Royalty Company, a trust estate, in the City National Bank of Wichita Falls, referred to in the record as the old bank, and to recover losses suffered by said trust estate on account of said bank's participation with Peckham, a former trustee of Wichita Royalty Company, in breaches of trust, and for an accounting; and to recover from J. T. Harrell on account of his participation with the said trustee in said breaches of trust; and it was proven upon the trial of this cause that the said bank was a depositary of trust funds belonging to the Wichita Royalty Company and of the personal funds of said Peckham, trustee, and that it permitted the said trustee to transfer large sums of money from the trust account to his personal account and to disburse them for unauthorized trust purposes, some to pay the bank his personal debts, some for the purpose of paying officers of the bank, including the said Harrell, his individual debts to said officers, and the re-

mainder for unauthorized trust purposes; and it was further proven that said Harrell represented the said bank in said transactions and had full knowledge and notice of said improper and unauthorized disbursements of said trust funds and participated with the trustee in his said breaches of trust and was in large part a beneficiary of the said breaches of trust, and that upon an accounting the said cross-complainants were entitled to a recovery against said Harrell for the losses of said trust estate suffered on account of said breaches of trust amounting to $110,225.88, with interest.

2263

IX.

The District Court erred in failing and refusing to render judgment in favor of the cross-complainants against the City National Bank of Wichita Falls, referred to as the old bank, in the sum of $110,225.88, with interest, representing losses suffered by the Wichita Royalty Company, a trust estate, on account of breaches of trust of Peckham, the former trustee, in which the said bank with full knowledge and notice participated.

X.

The District Court erred in failing and refusing to render judgment in favor of the cross complainants against J. T. Harrell in the sum of $110,225.88, with interest, representing losses suffered by the Wichita Royalty Company, a trust estate, on account of breaches of trust of Peckham, the former trustee, in which the said Harrell with full knowledge and notice participated.

XI.

The District Court erred in denying cross-complainants recovery against the City National Bank in Wichita Falls, referred to in the record as the new bank, and in dis-

missing cross-complainants' bill of interpleader against said bank in this: It was alleged and proved that cross-complainants were creditors of the City National Bank of Wichita Falls, referred to in the record as the old bank, and that in March, 1933, said old bank became insolvent and ceased to do business, and thereafter transferred to the new bank all of its assets; that the transfer of said assets and the contract made between the two banks at the time resulted in the new bank's receiving all of said assets in the nature of trust funds for the benefit of cross-complainants and other creditors of the old bank and in preferring the new bank as a creditor under a contract made at a time when the old bank was insolvent.

2264 XII.

The District Court erred in denying Cross Complainants recovery against J. T. Harrell, L. H. Cullum, Leslie Humphrey, Jack Jeffus, Oral Jones, Frank Kell, Joe Kell, J. J. Perkins, C. W. Snider and F. P. Timberlake, and in dismissing Cross Complainants' Bill against said parties in this: It was alleged and proved that Cross Complainants were creditors of the City National Bank of Wichita Falls, referred to in the Record as the old bank, and that said individuals were the directors of said corporation, which Bank was in a state of contemplated insolvency from and after October, 1931, closing its doors in March, 1933, and said directors became and in said period of time were trustees and the assets of said old bank in their possession and under their control constituted a trust fund for the benefit of Cross Complainants and other creditors of the old bank, and said directors disposed of all of the assets so held by them in trust for the benefit of creditors, receiving substantial portions thereof themselves and transferring a substantial remainder thereof to the City National Bank in Wichita Falls, which they organized, transferring the remaining assets of the old bank to J. T. Harrell, trustee, and giving a pretended lien to the

new bank upon the remaining assets of the old, said parties becoming personally preferred and liable to account to the creditors, including Cross Complainants, for all of the assets of said corporation.

XIII.

The Court erred in denying Cross Complainants recovery against Texas Investment Company and in dismissing Cross Complainants' Bill against the same in that it was alleged and proved that said corporation was dissolved, its assets having been transferred to the City National Bank of Wichita Falls, which Bank was
2265 debtor to Cross Complainants, with the record title to said assets of said old bank standing in the corporate name of Texas Investment Company.

XIV.

The Court erred in denying Cross Complainants recovery against W. H. Peckham, Administrator of the Estate of G. W. Peckham, deceased, Hazel D. Peckham, William Peckham, George Peckham and Robert Peckham, heirs of G. W. Peckham, deceased, in that it affirmatively appeared that G. W. Peckham, while trustee of Wichita Royalty Company misappropriated $110,225.88 with liability therefor arising, with interest thereon.

XV.

The Court erred in rendering judgment in favor of the City National Bank in Wichita Falls against the City National Bank of Wichita Falls for $184,000.00, with foreclosure of a lien upon said bank's assets and causing the same to be sold and confirming the sale thereof to the new bank, in that it affirmatively appears from the pleading and proof that at the time of the origin of the alleged

indebtedness the City National Bank of Wichita Falls was a closed institution, insolvent, whose directors formed a new bank to take over its assets, and said new bank, as transferee of said assets of the insolvent bank acquired no title thereto as against the creditors of said insolvent bank, and said new bank took said assets charged with a trust for the ratable benefit of all the creditors of the insolvent bank. The Court erred in giving the new bank judgment against the old bank and in directing and confirming the sale to the new bank of the assets of the old.

2266 XVI.

The Court erred in rendering judgment against Cross Complainants for one-half of the costs of the proceeding, including the cost of the Examiner.

XVII.

The Court erred in admitting in evidence a deed executed by G. W. Peckham to Wichita Royalty Company describing the property known as a half interest in Marlborough Addition, in that said deed was never delivered. It remained under the control of the grantor during his lifetime. It involved a transaction not authorized by the Declaration of Trust. It involved a transaction between G. W. Peckham, the individual, and G. W. Peckham, the trustee, and the dual dealing of G. W. Peckham, while in a fiduciary capacity, without knowledge by or notice to the beneficiaries, said properties conveyed by G. W. Peckham in his lifetime to Texas Investment Company without notice or knowledge of said unrecorded from G. W. Peckham, the individual, to his trust, the consideration set up by G. W. Peckham for himself against himself as trustee being in profit to himself.

XVIII.

The Court erred in admitting in evidence deeds to properties known as the Grimshaw Royalty, the Wilson

Royalty, the White lease, the Routon Lease, the South Anderson Ranch property, Millner oil payment, the Curtis Lane Property, the Callahan royalty, the Porter Ranch, the Anderson Ranch, and the Hartley County property, and in finding that the trust was bound with respect thereto by the transactions had by G. W. Peckham, the individual, with G. W. Peckham, the trustee, without notice to or knowledge by the stockholders, it
2267 affirmatively appearing that each transaction involved a breach of trust unknown to, not ratified by or acquiesced in by the stockholders, with repudiations and tenders made and prayer for a recovery of the moneys received by G. W. Peckham. It was error to hold that either of these transactions was a proper account for trust funds belonging to Wichita Royalty Company. The District Court erred in its implied finding and holding that G. W. Peckham, the individual, might, with his own funds and in his own name, acquire property as his own and of a fluctuating value, and might at some subsequent time determine by himself, convey the same to his trust and enter upon the books of the trust a charge therefor in an amount which he determined and thus constitute the use of such funds a proper account therefor.

XXIX.

The District Court erred in finding and holding that under the terms of the trust instrument Peckham, the trustee, had right and authority to keep funds belonging to the trust in his private account.

XXX.

The District Court erred in holding that under the terms of the trust instrument Peckham, the trustee, was authorized and empowered to "use himself as a conduit for either property or funds from strangers to the trust".

XXXI.

The District Court erred in failing to hold that under the terms and provisions of the trust instrument, correctly interpreted, the trustee Peckham had no authority to transfer trust funds from the trust account to his personal account.

2268

XXXII.

The District Court erred in holding that it was the duty of the trustee, Peckham, merely to ultimately cause the title to property belonging to the trust estate to be vested in himself as trustee. The trust instrument, correctly interpreted, required that all property acquired by the trust should be taken and held in the name of the trustee as such.

XXXIII.

The District Court erred in holding that the evidence failed to show any dishonest transaction by the trustee Peckham.

XXXIV.

The District Court erred in holding, in effect, that the payment by the trustee of his personal indebtedness out of funds belonging to the trust was not a dishonest transaction and was not a breach of the trust.

XXXV.

The District Court erred in holding that the trust estate had placed its money and property at the disposition of the trustee Peckham without limit or control, thus failing to give effect to the terms of the trust instrument defining the powers of the trustee.

XXXVI.

The District Court erred in holding that the liability of the bank was determined by its receiving a benefit out of the trust funds and that its liability was measured by the amount of the benefits so received.

2269

XXXVII.

The District Court, having expressly found that, with the knowledge and participation of the bank, funds were taken from the trust account and applied by the trustee and the bank to the payment of the trustee's personal debts to the bank, erred in failing to further hold that this constituted a breach of trust in which the bank participated, in that the bank was liable for all subsequent withdrawals of money by the trustee from the trust account that were applied by the trustee to a purpose unauthorized by the trust instrument.

XXXVIII.

It expressly appearing that funds belonging to the trust were with the knowledge and consent of the bank applied by the trustee to the payment of his personal debts to the bank, the District Court erred in failing to hold that this constituted a breach of trust on the part of the trustee in which the bank participated.

XXXIX.

The District Court, having held that the bank wrongfully received such a direct benefit out of the $25,000.00 loan to the trust estate as was sufficient to destroy its right to recover in its suit on the notes, erred in failing to hold that cross complainants were not entitled to recover from the bank as for a wrongful participation in the trustee's breaches of trust.

XL.

The District Court erred in failing to hold that the ruling and the opinion of the Supreme Court of Texas upon the first trial and appeal of this cause did not constitute the law of the case.

2270

XLI.

The District Court, having held that the bank received certain direct benefits in connection with certain breaches of trust in which it participated, erred in holding that its liability in connection with subsequent transactions was measured by the amount of benefits it improperly received and by its good faith in connection with each transaction. It is submitted that when the bank wrongfully participated in one breach of trust, it was thereby put upon inquiry in respect to the trustee's subsequent handling of trust funds and was liable for all improper and unauthorized withdrawals of the trust account subsequently made by the trustee.

XLII.

The District Court erred in failing to find the facts specially and to state separately its conclusions of law, as required by Equity Rule 70-1/2; its findings being merely general and not special and of a nature as to require the reviewing Court to review the whole record to determine the facts, to the end that it may state and apply the law.

Wherefore, the said Cross-Complainants, appellants on this appeal, pray that the decree of the District Court may be reversed.

KILGORE & ROGERS,
GUY ROGERS,
Solicitors for said Cross-Complainants.

ORDER ALLOWING APPEAL AND FIXING BOND.

2271 Filed and entered July 3, 1937.

(Title Omitted.)

The petition of Wichita Royalty Company and E. E. Scannell, Trustee, herein praying allowance of appeal from the final decree heretofore entered in this Court dismissing their Cross Bills of Complaint and denying them recovery against the City National Bank of Wichita Falls, the City National Bank in Wichita Falls, J. T. Harrell, individually and as trustee, E. A. Deaton, Liquidating Agent, W. H. Peckham, Administrator of the Estate of G. W. Peckham, deceased, Texas Investment Company, Hazel D. Peckham, William Peckham, George Peckham, Robert Peckham, L. H. Cullum, Leslie Humphrey, Jack Jeffus, Oral Jones, Frank Kell, Joe Kell, J. J. Perkins, C. W. Snider, and F. P. Timberlake, removing Lis Pendens Notice as cloud from title, decreeing the City National Bank of Wichita Falls due the City National Bank in Wichita Falls $184,000.00, awarding foreclosure of an alleged lien upon the assets of the City National Bank of Wichita Falls, directing and confirming the sale thereof, taxing half of the costs incurred against them, overruling an original and amended Plea to the Jurisdiction and Motion to Remand, being now presented.

It is hereby ordered that an appeal be allowed to the United States Circuit Court of Appeals for the Fifth Circuit, as prayed for, and that a transcript of
2272 such part of the record and proceedings herein as the parties may by praecipe duly designate, be transmitted, duly authenticated, to the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, in the manner provided by law.

It is further ordered that bond for costs to be given by said cross-complainants on said appeal be and the same

is hereby fixed in the sum of One Thousand Dollars conditioned as provided by law.

Done and ordered in open Court at Dallas, Texas, this 3rd day of July, A. D. 1937.

WM. H. ATWELL,
United States District Judge

2273 COST BOND ON APPEAL.

Filed in U. S. Dist. Court July 7, 1937.

(Title Omitted.)

The State of Texas,
County of Wichita.

Know All Men By These Presents: That we, Wichita Royalty Company, a trust estate, and E. E. Scannell, trustee, as principals, and the undersigned, as surety, acknowledge ourselves to be jointly indebted to the City National Bank of Wichita Falls, The City National Bank in Wichita Falls, J. T. Harrell, individually and as trustee, E. A. Deaton, Liquidating Agent, W. H. Peckham, Administrator of the Estate of G. W. Peckham, deceased, Texas Investment Company, Hazel D. Peckham, William Peckham, George Peckham, Robert Peckham, L. H. Cullum, Leslie Humphrey, Jack Jeffus, Oral Jones, Frank Kell, Joe Kell, J. J. Perkins, C. W. Snider and F. P. Timberlake, and to all parties at interest in the above entitled numbered cause in the sum of One Thousand ($1,000.00) Dollars, conditioned:

That, whereas, upon the 9th day of April, A. D. 1937, in the District Court of the United States for the Northern District of Texas, at Wichita Falls, in a suit therein pend-

ing on the docket of said Court, styled City National Bank of Wichita Falls, et al vs. Wichita Royalty Company, et al, Number 358 in Equity, a judgment was rendered and entered denying Wichita Royalty Company and E. E. Scannell, Trustee, recovery against the City National Bank of Wichita Falls, The City National Bank in Wichita Falls, J. T. Harrell, individually and as trustee, E. A. Deaton, Liquidating Agent, W. H. Peckham, Administrator of the Estate of G. W. Peckham, deceased, Texas Investment Company, Hazel D. Peckham, William Peckham, George Peckham, Robert Peckham, L. H. Cullum, Leslie Humphrey, Jack Jeffus, Oral Jones, Frank Kell, Joe Kell, J. J. Perkins, C. W. Snider and F. P. Timberlake, and dismissing cross-complainants' Bill of Complaint, and wherein Lis Pendens Notice filed by cross-complainants against Texas Investment Company was removed as a cloud upon the title and properties of the City National Bank of Wichita Falls and Texas Investment Company, and wherein an alleged indebtedness due the City National Bank in Wichita Falls was adjudicated to be $184,000.00, with foreclosure of an alleged lien upon the City National Bank of Wichita Falls and directing the sale thereof, the Court having confirmed the sale made pursuant to said judgment, and wherein half of all costs incurred in the proceeding, including the costs of the Examiner, were taxed against cross-complainants, all as more fully appears from said judgment and orders on file and of record in the office of the clerk of said Court, to which judgment and record thereof reference is hereby made for more complete description and for all purposes, and from which said judgment and orders the said Wichita Royalty Company and E. E. Scannell, Trustee, having prosecuted their appeal to the United States Circuit Court of Appeals for the Fifth Circuit:

2274

Now, Therefore, if the said Wichita Royalty Company and E. E. Scannell, Trustee, shall prosecute their appeal

witn effect and answer and pay all costs that may
2275 be adjudged against them if they fail to make their plea good, then the above obligation is void; otherwise to remain in full force and effect.

This, the 6th day of July, A. D. 1937.

WICHITA ROYALTY COMPANY,
By E. E. SCANNELL,
Trustee.
By GUY ROGERS,
Agent & Attorney, Principals.
FIDELITY & DEPOSIT COMPANY OF MARYLAND,
(Seal) By HORRACE ROBBINS,
Attorney in Fact, Surety.

Examined, approved and ordered filed this 7th day of July, A. D. 1937.

WM. H. ATWELL,
United States District Judge.

ORDER TRANSMITTING ORIGINAL EXHIBITS.

2278 Filed and entered July 3, 1937.

(Title Omitted.)

At the request and with the consent of parties, it is Ordered that there be sent to the Circuit Court of Appeals with the Record on appeal the following original exhibits:

1. Defendant's Exhibit 18, being a deed executed by A. J. Mathis et ux;

2. Defendant's Exhibit 107, being a letter by G. W. Peckham to Wichita Royalty Company;

3. A part of defendant's Exhibit C, being Wichita Royalty Company's Checks Nos. 46, 47, 48, 49, 598, 602, 154, 610 and 607.

It is further Ordered that when the appeal shall have been decided, said Exhibits be returned to the Clerk of this Court and by said Clerk delivered to Wichita Royalty Company.

And it is so Ordered this, the 3rd day of July, A. D. 1937.

WM. H. ATWELL,
United States District Judge.

2279 PRAECIPE.

Filed in U. S. Dist. Court July 8, 1937.

(Title Omitted.)

To the Clerk of the United States District Court, for the Northern District of Texas, Sir:

You will please prepare a transcript of record to be transmitted to the Circuit Court of Appeals for the Fifth Circuit in pursuance to the appeal taken in this case, and include therein the following:

1. City National Bank's Second Amended Original Petition.

2. Wichita Royalty Company's Third Amended Original Answer, Cross-Action and Interpleader.

3. Petition for removal of City National Bank et al.

4. Notice of Intention to Remove by City National Bank et al.

5. Bond for removal of City National Bank et al.

6. Petition for Removal by Robert Peckham.

7. Notice of Removal by Robert Peckham, et al.

8. Bond for Removal by Robert Peckham, et al.

9. Petition for Removal of Hazel D. Peckham et al.

10. Bond for Removal by Hazel D. Peckham et al.

11. Original Plea to Federal Jurisdiction and Motion to Remand.

12. Order overruling Original Plea to Jurisdiction and Motion to Remand.

2280 13. City National Bank's Repleaded Bill of Complaint.

14. Amended Plea to Federal Jurisdiction and Motion to Remand.

15. Opinion on Amended Plea to Federal Jurisdiction and Motion to Remand.

16. Order overruling Amended Plea to Federal Jurisdiction and Motion to Remand.

17. Wichita Royalty Company's Answer to City National Bank's Repleaded Bill of Complaint.

18. Answer of Charles L. Black and Guy Rogers.

19. Disclaimer of Guy Rogers, Trustee.

20. Wichita Royalty Company's Repleaded Cross Bill of Complaint, Cross Action and Interpleader against City National Bank et al.

21. Wichita Royalty Company's Cross Complaint and Interpleader against J. T. Harrell.

22. Wichita Royalty Company's Recasted Cross Complaint and Interpleader against City National Bank in Wichita Falls et al.

23. Answer of City National Bank in Wichita Falls et al to Wichita Royalty Company's Cross Bill and Interpleader.

24. Answer of J. T. Harrell et al to Wichita Royalty Company's Cross Action and Interpleader.

25. Answer of City National Bank of Wichita Falls et al to Wichita Royalty Company's Cross Bill of Complaint.

26. Answer of the Administrator and Heirs of G. W. Peckham, deceased.

27. Statement of the evidence.

28. Opinion of the Court.

29. Final Judgment.

30. Report of E. A. Deaton, Special Commissioner.

31. Wichita Royalty Company's Objections to Report of Special Commissioner.

32. Order Confirming Report of the Special Commissioner.

2281 33. Petition for the Allowance of an Appeal.

34. Assignment of Errors.

35. Order Allowing Appeal and fixing security.

36. Cost Bond on Appeal.

37. Citation and Acknowledgment of Service.

38. Order transmitting Original Exhibits.

39. Praecipe.

KILGORE & ROGERS,
By GUY ROGERS,
Solicitors for Cross Complainants Appellants.

Service of the above praecipe is hereby acknowledged this 9th day of July, A. D. 1937.

BULLINGTON, HUMPHREY & KING,
By LESLIE HUMPHREY,
Solicitors for Complainant and Impleaded Defendants other than J. T. Harrell and the Estate and Heirs of G. W. Peckham, deceased.
BOONE & DUFF,
By T. R. BOONE,
Solicitors for J. T. Harrell.
ARCH DAWSON,
Solicitor for the Estate and Heirs of G. W. Peckham, deceased.

2282 AGREEMENT TO SHORTEN THE RECORD.

Filed July 14, 1937.

(Title Omitted.)

In order to shorten the Record, it is agreed that the entire transcript on removal from the District Court of

Wichita County, Texas, to the United States District Court need not be copied in full, but only such portions as are requested by either party.

It is further agreed that the copy of the Third Amended Original Answer, Cross-action and Interpleader of the Wichita Royalty Company, accompanying the citation and summons issued therein to the defendants, may be omitted from such citation and summons, as said Third Amended Original Answer, Cross-action and Interpleader is already shown in the Record.

It is further agreed that the transcript of the record from the State Court contains the usual certificate of the District Clerk as to its correctness, which certificate is dated the 25th day of July 1936, and which transcript from the State Court was filed in the United States District Court for the Northern District of Texas, at Wichita Falls, on the 25th day of July, 1936, by the Clerk of said Court.

Witness Our Hands, this 12 day of July A. D. 1937.

KILGORE & ROGERS,
By GUY ROGERS,
Solicitors for Cross Complainants-Appellants, Wichita Royalty Company and E. E. Scannell, Trustee.

TARLTON MORROW,
BULLINGTON, HUMPHREY & KING,
By LESLIE HUMPHREY,
Solicitors for Complainant, City National Bank of Wichita Falls and Impleaded Defendants.

BOONE & DUFF,
By T. R. BOONE,
Solicitors for J. T. Harrell.

ARCH DAWSON,
Solicitors for the Estate and Heirs of G. W. Peckham, Deceased, and W. H. Peckham.

SECOND AMENDED ORIGINAL ANSWER, CROSS ACTION AND INTERPLEADER OF WICHITA ROYALTY COMPANY.

2283 Filed April 27, 1931.

In the 78th District Court of Wichita County, Texas.

The City National Bank of Wichita Falls, Texas.
vs. No. 24549-B
Wichita Royalty Company, et al.

Comes now Wichita Royalty Company, a joint stock association operating under a declaration of trust filed in Wichita County, Texas, and E. E. Scannell, Trustee, and one of some thirteen hundred stockholders of Wichita Royalty Company, who joins herein for himself and all other stockholders of said Company, herein called cross complainants, in answer to plaintiffs First Amended Original Petition, as well as in cross-action against the plaintiff, the Cit. National Bank of Wichita Falls, Texas, a National Banking corporation, with its principal place of business and with officers and agents in Wichita County, Texas, and by way of interpleader against J. T. Harrell, a resident citizen of Wichita County, Texas, with leave of Court first had and obtained, file this their second amended (1) original answer, (2) plea of reconvention and cross-action against the City National Bank of Wichita Falls, Texas, and (3) interpleader and cross-complaint against the impleaded defendant J. T. Harrell, same being filed in amendment of like pleadings filed February 14, 1931, and for such pleadings say:

1. Cross-complainants except generally to the first Amended original petition filed herein by plaintiff and say the same is insufficient at law to constitute a cause of action, and of this exception pray judgment of the Court.

2. Except as herein specifically admitted, cross-complainants deny all and singular each and every averment of fact in plaintiffs said Amended Petition con-
2284 tained, demand strict proof thereof and with respect thereto put themselves upon the country and ask thereon a determination thereof by a jury.

3. Pleading non est factum to the instruments declaired upon by plaintiff, cross-complainants say that neither of said obligations herein sued on by plaintiff was executed by or with authority from Wichita Royalty Company; that Wichita Royalty Company is neither the maker nor indorser nor otherwise a party to nor bound by any instrument and/or obligation sued on nor any manner purporting to create a lien as security therefor; that if in fact any one signed Wichita Royalty Companys name to any of the instruments sued on the same was wholly inoperative against the association and no one had authority to bind said company thereby; that as will hereinafter more fully appear Wichita Royalty Company received no consideration for any of the instruments sued on by plaintiff; that as will hereinafter more fully appear the plaintiff has been fully paid and Wichita Royalty Company is not obligated to pay the plaintiff any sum of money whatsoever, while on the other hand the plaintiff and/or the impleaded defendant, J. T. Harrell, is indebted to the Wichita Royalty Company in the amounts, from the times and upon the facts hereinafter shown.

4. That as was at all times known to the plaintiff, its officers and agents, as well as the impleaded defendant, J. T. Harrell, the only power ever given by Wichita Royalty Company to any trustee and/or agent was to carry out the purpose of the organization of Wichita Royalty Company, said purpose and the declaration of trust creating said organization limiting the authority of the trustee to the purchase and sale of oil and gas royalties and other oil and gas properties; that any act
2285 done by any trustee beyond such power and for any purpose other than as last above shown

was and is wholly unauthorized and was and is not the act of Wichita Royalty Company.

5. That during 1925 and subsequent years, the former trustee of this association, George W. Peckham, now deceased, J. T. Harrell, and others whose names it is not now material to allege, were from time to time jointly interested in the purchase of mutual profit of interest in the oil and gas properties and the *the* sales thereof, constituting inter se se a partnership for the purpose of dealing in and the purchase and sale of oil and gas properties.

6. That during and after said year 1925, the impleaded defendant J. T. Harrell, was the chief executive officer of the plaintiff bank, being in active charge of all of its affairs as both the titular and real head of the institution.

During said period of time and at all times material to the facts hereinafter averred, the said J. T. Harrell knew, as did all other officers and/or agents of plaintiff bank having anything to do with the transactions hereinafter set forth, that this defendant was a joint stock association operating under a declaration of trust and having for its sole and only purpose the purchase and sale of interests in royalty and other oil and gas properties.

7. That said J. T. Harrell, for and on behalf of plaintiff bank, passed upon the lines of credit for G. W. Peckham as an individual, for the respective enterprises in which the Harrell, Peckham et al partnership engaged, for Wichita Royalty Company, and for the partnership known as Marlborough Addition whose constituent members are hereinafter named.

2286 8. On or about January 16, 1926, Wichita Royalty Company was not indebted to the plaintiff bank in any sum of money whatsoever and owed no debts other than current bills, which bills themselves have subsequently been paid. That theretofore the plaintiff bank,

acting by and through its executive, J. T. Harrell, had loaned to this defendant various sums of money and in each instance had taken as security therefor deeds of trust upon the real properties of this defendant, but all of which former loans had all been paid, and on January 1st, 1926, this defendant was not indebted to the City National Bank in any sum whatsoever.

9. That in the late fall of 1925, J. T. Harrell, W. H. Peckham, G. W. Peckham and J. A. Kemp, as individuals and partners operating under the firm name of "Marlborough Addition" began negotiations for the purchase of certain properties adjacent to the City Limits of Wichita Falls, Texas, with a view of its development as a suburban site to be known as Marlborough Addition, which negotiations culminated on or about January 8th, 1936, in said individuals as partners becoming possessed with the title to 57.65 acres of land in close proximity to the City of Wichita Falls, Texas, the same being bought from Highland Irrigation Company, and in the deeds of conveyance to said partners of Marlborough Addition, the said J. T. Harrell, W. H. Peckham, G. W. Peckham and J. A. Kemp had become jointly and severally liable to the Highland Irrigation Company in the payment of $51,-885.00 as evidenced by their several notes secured by vendors lien retained in the conveyance.

10. That at the time of the purchase by said partnership known as Marlborough Addition G. W. Peckham as an individual was personally obligated to the
2287 City National Bank of Wichita Falls, Texas, upon notes executed by him in excess of twenty-eight thousand dollars.

11. That said J. T. Harrell as an executive of the plaintiff bank personally handled the line of credit of G. W. Peckham as an individual and at all times knew the financial condition of the said G. W. Peckham and knew the financial condition of Wichita Royalty Company of which

the said G. W. Peckham was until the time of his death the local agent and trustee; that said Harrell personally handled on behalf of the bank the line of credit for Marlborough Addition and personally handled all the financial affairs of Marlborough Addition; that said Harrell on behalf of said bank, personally handled the line of credit of the partnership of Harrell, Peckham and others in their operation in the oil business; that said J. T. Harrell as an individual and as an officer of the bank at all times knew the financial transactions of or pertaining to all of said undertakings.

12. That said G. W. Peckham was without funds sufficient to pay off and discharge the obligations incurred by his joining the other partners of Marlborough Addition in the purchase of said acreage with a view to its development as a suburban site, and his line of credit with plaintiff bank was exhausted by the more than twenty-eight thousand dollar item then due the bank by him, whereupon it was conceived by the said G. W. Peckham with the knowledge, consent and acquiescence if not the active participation by the impleaded defendant J. T. Harrell, and/or said banks having knowledge of such facts sufficient to put the bank upon inquiry which if performed would have disclosed to the bank a full knowledge that the City National Bank of Wichita Falls would loan sufficient monies so that therefrom the said G. W. Peckham as an individual might obtain funds
2288 sufficient to discharge the Marlborough debt to the extent of G. W. Peckham's liability thereon.

13. Accordingly and on about January 16, 1926, G. W. Peckham executed to the plaintiff bank this defendants note for $15,300.00 which was approved by the impleaded defendant J. T. Harrell upon behalf of the plaintiff bank, and thereafter and between the same parties a loan was negotiated whereby this companys note payable record at said bank was increased March 1, 1926, $25,000.00 the balance on the bank's note payable record as of that date

showing an obligation of the Wichita Royalty Company to the bank of $40,800.00.

14. At and prior to the negotiation of said entire loan, it was understood between the parties that W. H. Peckham, a brother of G. W. Peckham, would convey to G. W. Peckham the W. H. Peckham interest in and to the assets of Marlborough Addition, and accordingly on March 6, 1926, the said W. H. Peckham interest in said Marlborough Addition in consideration of one dollar and other things of value whereby the said G. W. Peckham was vested with title to an undivided *hald* interest in said Marlborough Addition.

15. Check No. 478, on March 6th, 1926, and at a time when G. W. Peckham had on deposit in the City National Bank but $125.00, and was indebted to said bank upon notes payable in excess of $28,050.00, the said G. W. Peckham caused Wichita Royalty Companys Check No. 478 to be issued payable to said bank in the sum of $17,623.70.

Said check so issued and delivered to the plaintiff bank was drawn thereon upon a voucher form, and on said check and as a part thereof was a reference to an attached remittance statement showing the purpose of the item, and which read as follows:

2289 "Real Estate—City Property.

To apply on purchase of 1/2 undivided interest in the Marlborough Addition (consisting of 252 lots) to the City of Wichita Falls, Texas, (Total consideration is $49,566.20. This check No. 478 for $17,623.70 and check No. 479 of this date for $6,000.00 represent the total cash consideration.

For the balance of consideration our interest is subject to $23,215.80 due 1-2-3 years from September 19, 1925

this indebtedness being secured by *secured by* 12 vendors lien notes against the property, which draw 9% interest per annum and are payable to the Highland Irrigation Company, See Journal entries Nos. 27 and 28, March 6, 1936.

"March 6, 1926 478 City National Bank $17,623.70."

The officers and agents of the City National Bank knew and/or were possessed with knowledge of such facts as if reasonably inquired into would have disclosed full knowledge to the bank that the issuance of such check was beyond the power of the trustee and for a purpose beyond the scope of his employment, and for purpose unterior to the general purpose for which the company was organized but with such knowledge and possessed of such facts and contrary to the direction of said check itself and with no competent instruction other than the check as written, the plaintiff bank charged this defendants account therewith and gave to G. W. Peckham as an individual person credit therefor permitting said fund to be dissipated by G. W. Peckham after his intermingling said monies with his personal funds and thereupon checking the same out for purposes not within the compass of the organization and not for its benefit, the
2290 officers and agent of plaintiff bank actively participating with knowledge, in the transfer of said fund from this defendants account to the personal account of G. W. Peckham.

Said monies as wrongfully diverted from this Defendants account would never have been returned to this defendant.

16. Check No. 479, on March 6, 1926, and at a time when G. W. Peckham's personal account with the City National Bank had been reduced to but $125.20 and whose indebtedness to the bank at said time was in excess of $28,050.00, the said G. W. Peckham caused this de-

fendants check for $6,000.00 to be issued payable to Security National Bank, and on said check and as a part thereof was a reference to an attached remittance statement showing the purpose of the item, and which read as follows:

"Real Estate City Property.

To apply on purchase of 1/2 undivided interest in the Marlborough Addition (consisting of 252 lots) to the City of Wichita Falls, Texas. (Total consideration is $49,-566.20. This check No. 479 for $6,000.00 and check No. 478 for $17,623.70 represent the total cash consideration.

For the balance of consideration our interest is subject to $23,215.50 due in 1-2-3 years from September 19, 1925, and $2,727.00 due 1-2-3 years from January 8, 1927, this indebtedness being secured by 12 Vendors lien notes against the property, which drawn 8% interest per annum and are payable to the Highland Irrigation Company. See Journal Entries Nos. 27 and 28, March 6, 1926.)

Said check was by the City National Bank charged against this defendant account, said G. W. Peckham having received personal credit therefor in the
2291 Security National Bank without authority and the monies being thus withdrawn from Wichita Royalty Companys deposit with the City National Bank and which withdrawal has never been replaced in whole or in part.

17. Check No. 485, on March 31, 1926, and at a time when G. W. Peckham had on deposit in the City National Bank but $503.98 and was indebted to the City National Bank in excess of $28,050.00 the said G. W. Peckham caused Wichita Royalty Companys check No. 485 to be issued in the sum of $7500.00 payable to the plaintiff bank, and on said check and as a part thereof was a reference

to an attached remittance statement showing the purpose of the item and which read as follows:

"Real Estate Improvements to apply on our half interest in improving the Marlborough Addition Wichita Falls, Texas, the improvements consisting of rights, water, gas, sewerage and grading and paving streets, $7500.00."

That contrary to the direction of said check and without authority and possessed of knowledge of all the facts above pleaded, and with knowledge that said G. W. Peckham was without authority to receive personal credit for said trust funds, the plaintiff bank charged this defendants account with $7500.00 and credited the account by deposit of G. W. Peckham therefor and permitted said fund to be intermingled with the personal funds of G. W. Peckham and by his disbursed for purposes in no way enuring to the benefit of this defendant, but solely and only for items of his own account.

18. Check No. 503, on May 20, 1926, and at a time when G. W. Peckham's account with the City National Bank had been reduced to but $328.27, and at a time when the said G. W. Peckham was indebted to the Plain-
2292 tiff Bank in excess of $28,050.00, the said G. W. Peckham caused this defendants check No. 503 to be issued payable to the order of G. W. Peckham drawn on the City National Bank and in the sum of three thousand dollars, and on said check and as a part thereof was a reference to an attached remittance statement showing the purpose of the item, and which read as follows:

"To improvements on Marlborough Addition $3,000.00"

That said check showed on its face that it was drawn upon trust funds and payable to the order of the trustee from which together with other facts shown above, the officers and agents of plaintiff bank knew that the trustee had no authority to withdraw the funds of his principal

and deposit the same to his personal account, but notwithstanding such knowledge the officers of plaintiff bank charged said check against Wichita Royalty Companys account and gave to G. W. Peckham personal credit therefor, and on even date therewith cashed the said G. W. Peckham's check against said fund so deposited in the sum of two thousand dollars, and by other checks permitted the said G. W. Peckham to withdraw said entire amount and the said three thousand dollars has never been replaced.

19. Check No. 507, That on May 9, 1926, and at a time when G. W. Peckham had on deposit with plaintiff bank but $517.72 was indebted to the plaintiff bank in excess of $28,050.00 said G. W. Peckham caused Wichita Royalty Companys check No. 507 to be issued for $1500.00 drawn on and payable to the plaintiff bank, and on which check and as a part thereof was a reference to an attached remittance statement showing the purpose of the item and which read as follows:

2293 "To apply on our proportion of improvements, $1500.00". That said check was on June 2, 1926 charged against Wichita Royalty Companys account by plaintiff and credited to the personal account of G. W. Peckham, with knowledge upon the part of the officers and agents of Plaintiff bank that the said trustee had no right or authority to receive said trust funds nor to have the same deposited to his personal account, and said money so deposited and so diverted from the trust fund was without authority and known to be such by the officers of the bank when the transfer was permitted.

20. Check No. 510, on June 16, 1926, at a time when G. W. Peckham was personally indebted to plaintiff bank in excess of $28,050.00, the said G. W. Peckham caused this defendants check No. 510 to be issued for $4500.00 drawn on and payable to the plaintiff bank, and on said check and as a part thereof was a reference to an attached re-

mittance statement showing the purpose of the item and which read as follows:

"To apply on improvements on Marlborough addition to our proportion, $4500.00."

That on or about said date said $4500.00 was charged against Wichita Royalty Company's account and credited to the personal account of G. W. Peckham, who was without authority to draw said check for such purpose and to whom no part of said funds were due or owing and who had no right to receive the same, but contrary to the direction of said check and with no competent authority whatsoever but the check itself, the plaintiff bank permitted the said G. W. Peckham to intermingle said trust fund with his own and to disburse the same for his own particular benefits.

21. Check No. 519. On July 13, 1926, and at a time when G. W. Peckham was personally indebted to the plaintiff bank in excess of $25,000.00 the said G. W. Peckham caused Wichita Royalty Companys check No. 519 to be issued in the sum of $1,000.00 drawn on and payable to the plaintiff bank and on said check and as a part thereof was a reference to an attached remittance statement showing the purpose of the item and which read as follows:

2294

"To apply on improvements on Marlborough Addition (our proportion) $1,000.00."

That on or about July 15, 1926 the plaintiff bank charged this defendants account with said one thousand dollars and credited the personal account of G. W. Peckham therewith, which money was co-mingled with the personal funds of G. W. Peckham with the active participation by the officers and agents of plaintiff bank, and disbursed by the said G. W. Peckham for his own individual account and in no way connected with the business of the trust estate.

22. Check No. 525. On August 2, 1926, and at a time when G. W. Peckham's account with plaintiff bank was

$720.39, and his indebtedness to the plaintiff bank was in excess of $25,000.00, the said G. W. Peckham caused this defendants check No. 525 to be issued in the sum of four thousand dollars, drawn on and payable to the plaintiff bank, and on said check and as a part thereof was a reference to an attached remittance statement showing the purpose of the item, and which read as follows:

"Notes payable: To apply on note due September 19, 1926, to Highland Irrigation Company for land in fee, $4,000.00.

That on or about August 2, 1926, the plaintiff bank charged this defendants account with said four thousand dollars and credited the personal account of G. W. Peckham therewith without authority therefor and possessed of knowledge that the said trustee had no auth-
2295 ority to receive personal credit therefor, which funds were so permitted to be intermingled with the personal funds of G. W. Peckham and by him disbursed in the payment of items personal to G. W. Peckham and in no way enuring to the benefit of this plaintiff.

23. Check No. 532. On August 27, 1926, and at a time when G. W. Peckham had on deposit with plaintiff bank but $119.52 and owed the plaintiff bank in excess of $28,050.00, the said G. W. Peckham caused the defendants check No. 532 to be issued, drawn on and payable to the plaintiff bank in the sum of $4357.58, and on said check and as a part thereof was a reference to an attached remittance statement showing the purpose of the item, and which read as follows:

"Notes payable: To apply on note due 9/19/26 to Highland Irrigation Company for land in fee	$3738.50
Interest expense: On above note, 9% for one year.	619.08
	$4357.58

That on or about said date Wichita Royalty Companys bank account was charged therewith and personal credit therefor given G. W. Peckham, and said fund was co-mingled with the personal funds of G. W. Peckham and by him disbursed for items personal to himself and in no way enuring to the benefit of this defendant.

24. Check No. 550. On November 20, 1926, the said G. W. Peckham caused Wichita Royalty Companys check No. 550 to be issued, drawn on and payable to the City National Bank in the sum of $7500.00, and on said day the said Plaintiff bank charged Wichita Royalty Company's account therewith and credited the same to the personal account of G. W. Peckham and permitted said monies to be co-mingled with the personal funds of G. W. Peckham and be disbursed for purposes beyond the
2296 business of the trust estate and in no way connected therewith but purely personal to the said G. W. Peckham.

25. Check No. 556. On December 22, 1926, G. W. Peckham caused Wichita Royalty Companys check No. 556 to be issued for $700.00 drawn on the City National Bank and payable to G. W. Peckham, and on said check and as a part thereof was a reference to an attached remittance statement showing the purpose of the item and which read as follows:

"To apply on two notes of $7,738.50 at rate of 8% per annum, this interest applying on period 9/19/25 to 9/19/26 —Highland Irrigation Company notes. $700.00."

That the officers and agents of plaintiff bank knew that the said G. W. Peckham was trustee of the Wichita Royalty Company and knew he had no authority to draw a check for the purpose shown, and knew he had no right to receive personal credit therefor, but nevertheless plaintiff bank charged said check against Wichita Royalty Companys' account and credited said item upon an ac-

count to which the said G. W. Peckham was personally indebted.

26. Check No. 556-A on December 22, 1926, G. W. Peckham caused Wichita Royalty Companys check No. 556-A to be issued for $538.16, drawn on the City National Bank and payable to G. W. Peckham, and on said check and as a part thereof was a reference to an attached remittance statement showing the purpose of the item, and which read as follows:

"To apply on two notes of $7,738.50, at rate of 8% per annum, this interest applying on period 9/19/25 to 9/19/26 —Highland Irrigation Company notes, for balance of interest paid see check No. 556. $538.16".

That the said officers and agents of plaintiff bank knew the said G. W. Peckham was trustee of the Wich-
2297 ita Royalty Company and knew he had no authority to draw a check for the purpose shown, and knew he had no right to receive personal credit therefor, but nevertheless plaintiff bank charged said check against Wichita Royalty Companys account and credited said item upon an account to which the said G. W. Peckham was personally indebted.

27. Check No. 571. On January 19, 1927, G. W. Peckham caused Wichita Royalty Companys check No. 571 to be issued, drawn on and payable to the plaintiff bank in the sum of Two Thousand Dollars, and on said check and as a part thereof was a reference to an attached remittance statement showing the purpose of the item and which read as follows:

"To apply on paving excess strip, Marlborough Addition. $2,000.00".

With knowledge of the purpose of said check and the want of authority in the trustee to issue the same for such

purpose, and knowing the trustee not to be entitled personally to receive said trust funds, the officers and agents of Plaintiff bank charged said check to Wichita Royalty Companys account and credited the personal account of G. W. Peckham therewith and permitted said G. W. Peckham to draw checks thereon.

28. Check No. 579. On February 19, 1927, G. W. Peckham caused Wichita Royalty Companys check No. 579 to be issued, drawn on and payable to the City National Bank, and on said check and as a part thereof was a reference to an attached remittance statement showing the purpose of the item and which reads as follows:

"To apply on paving strip, Marlborough Addition, $2,-500.00" With knowledge of the purpose of said check and the want of authority in the trustee to issue the same for such purpose, and knowing the trustee not to be 2298 entitled personally to receive said trust funds, the officers and agents of plaintiff bank charged said check to Wichita Royalty Companys account and credited the personal account of G. W. Peckham therewith and permitted said G. W. Peckham to draw checks thereon.

29. Check No. 880 on January 24, 1930, the trustee of Wichita Royalty Company executed Wichita Royalty Companys check No. 880, drawn on the City National Bank, payable to Marlborough Addition in the sum of $1500.00 and said check was given to J. T. Harrell as an officer and agent in plaintiff bank; and who knew the trustee had no authority to issue said check to Marlborough Addition, but which check was charged against the account of Wichita Royalty Company and went to the credit of that account from which by J. T. Harrell's disbursement, the Marlborough Additions' liability to Highland Company was reduced, and the personal liability of J. T. Harrell protento reduced, all with knowledge of the want of authority and of the improper use of said funds.

and there was an active participation by the plaintiff bank and/or the impleaded defendant, Harrell, in the wrongful diversion of trust funds.

30. Check No. 908. On May 13, 1930, the then trustee of Wichita Royalty Company caused Wichita Royalty Companys check No. 908 for $500.00 to be issued, drawn on plaintiff bank and payable to Texas Investment Company successor in interest to the partnership of Marlborough Addition, which check was requested by the impleaded defendant, J. T. Harrell, and to whom the same was delivered, and who knew that the trustee had no authority to issue such check for such purpose and knew that the funds of Wichita Royalty Company should not be diverted for that purpose, but notwithstanding
2299 such knowledge the plaintiff bank charged Wichita Royalty Companys account therewith and the fund was used in part liquidation of that indebtedness for which J. T. Harrell as an individual was personally liable.

31. That at the times, in the amounts and by check numbers shown, the trustees of Wichita Royalty Company issued its several checks payable to and drawn on the City National Bank which were charged against Wichita Royalty Companys deposit with said bank and credited upon the banks ledger showing Wichita Royalty Company's direct liability by reason of the loans made in January and March, 1926, respectively and more particularly shown above:

Check No.	Date	Amount
495	April 23, 1926	$ 300.00
506	May 29, 1926	500.00
521	July 16, 1926	300.00
531	August 27, 1926	500.00
540	Oct. 13, 1926	300.00
569	January 11, 1927	300.00
584	March 1, 1927	500.00
599	April 14, 1927	300.00

Check No.	Date	Amount
615	June 8, 1927	500.00
628	July 16, 1927	1500.00
682	January 18, 1928	2000.00
717	May 17, 1928	220.00
733	July 23, 1928	220.00
752	September 27, 1928	424.66
768	December 4, 1928	2000.00
891	February 19, 1929	1500.00
814	June 7, 1929	1500.00
824	July 15, 1929	212.49
836	August 30, 1929	$1000.00
856	November 23, 1929	1500.00
890	February 24, 1930	1000.00
898	April 10, 1930	1000.00
920	June 14, 1930	1500.00
930	July 14, 1930	3055.42

That at no time from and after October 1st, 1925, was Wichita Royalty Company indebted to the City National Bank in any sum whatsoever unless it be the transactions above shown whereby the bank gave to Wichita Royalty Company credit by deposit in January and March 1926 for $40,800.00 and took, Wichita Royalty Company's notes therefor in renewal for which the present note sued on was executed and which note so declared upon his no other consideration other than said original transactions; That all of the many checks herein elsewhere pleaded drawn on and payable to the City National Bank and charged against Wichita Royalty Companys account, no credit was given Wichita Royalty Company other than as last above shown in this numbered paragraph.

32. That of all of the monies diverted from Wichita Royalty Companys' account into the account of G. W. Peckham as herein elsewhere more fully appears, no part thereof was ever restored to Wichita Royalty Company and/or paid by the said G. W. Peckham out of the co-

mingled funds, save and except the following payments by G. W. Peckham to the City National Bank credited upon the liability ledger of Wichita Royalty Company:

November 26, 1926	$ 500.00
August 31, 1927	500.00
October 19, 1927	1336.00
February 15, 1928	3485.33
November 25, 1927	1500.00

2301 Said payments so made by the said G. W. Peckham total $7,321.33.

33. Check No. 582 on March 1st, 1927, G. W. Peckham had but $66.62 on deposit with plaintiff bank and owed said plaintiff bank more than twenty-seven thousand dollars, and thereupon the said G. W. Peckham caused Wichita Royalty Company's check No. 582 to be issued in the sum of $500.00, drawn on and payable to the plaintiff bank, and on said check and as a part thereof was a reference to an attached remittance statement showing the purpose of the item, and reading as follows:

"Interest expense: Interest on note held by City National Bank."

That contrary to the direction of said check and without authority and possessed of knowledge of all the facts herein elsewhere pleaded, and knowing that G. W. Peckham was without authority to receive personal credit for said funds, the plaintiff bank charged this defendants account with said check and credited the account of G. W. Peckham therewith and permitted said fund to be intermingled with the personal funds of G. W. Peckham and by him disbursed for purposes in no way enuring to the benefit of Wichita Royalty Company.

34. Check No. 620. On June 18, 1927, and at a time when G. W. Peckham had on deposit with the plaintiff

bank but $13.43 and was indebted to said bank in excess of $17,750.00 said G. W. Peckham caused this defendants check No. 620 to issue in the sum of $1,200.00 drawn on and payable to the City National Bank, and on said check and as a part thereof was a reference to an attached remittance statement showing the purpose of the item, reading as follows:

"Notes payable: To apply on note for money
2302 borrowed from City National Bank, $1,200.00."

That contrary to the direction of said check and without authority and possessed of knowledge of all the facts herein elsewhere pleaded, and knowing that G. W. Peckham was without authority to receive personal credit for said funds, the plaintiff bank charged this defendants account with said check and credited the account of G. W. Peckham therewith and permitted said fund to be intermingled with the personal funds of G. W. Peckham, and by him disbursed for purposes in no way enuring to the benefit of Wichita Royalty Company.

35. Check No. 635. On August 16, 1927, and at a time when G. W. Peckham had on deposit with plaintiff bank but $946.69 and when indebted to the plaintiff bank in excess of $18,750.00 with checks outstanding in excess of the combined total of his then deposit, said G. W. Peckham caused Wichita Royalty Company's check No. 635 to issue in the sum of $1,500.00 drawn on and payable to the City National Bank, and on said check and as a part thereof was a reference to an attached remittance statement showing the purpose of the item reading as follows:

"Notes payable: To apply on note held by City National Bank $1,500.00."

That contrary to the direction of said check and without authority and possessed of knowledge of all the facts herein elsewhere pleaded, and knowing that G. W. Peck-

ham was without authority to receive personal credit for said funds, the plaintiff bank charged this defendants account with said check and credited the account of G. W. Peckham therewith and permitted said fund to be intermingled with the personal funds of G. W. Peckham, and by him disbursed for purposes in no way enuring to the benefit of Wichita Royalty Company.

2303 36. Check No. 650. On October 14, 1927, and at a time when G. W. Peckham's deposit account with the plaintiff bank was down to $7.31 and he was personally indebted to plaintiff bank in excess of eight thousand dollars, the said G. W. Peckham caused Wichita Royalty Company's check No. 650 to issue in the sum of $2,400.00 drawn on and payable to the City National Bank, and on said check and as a part thereof was a reference to an attached remittance statement showing the purpose of the item, and reading as follows:

"Notes payable: To apply on money borrowed from City National Bank. $2,400.00."

That contrary to the direction of said check and without authority, and possessed of knowledge of all the facts herein elsewhere pleaded, and knowing that G. W. Peckham was without authority to receive personal credit for said funds, the plaintiff bank charged this defendants account with said check and credited the account of G. W. Peckham therewith and permitted said fund to be intermingled with the personal funds of G. W. Peckham, and by him disbursed for purposes in no way enuring to the benefit of Wichita Royalty Company.

37. Check No. 657. On November 25, 1927, G. W. Peckham caused Wichita Royalty Company's check No. 657 to issue for $1800.00 drawn on and payable to the plaintiff bank, and on said check and as a part thereof was

a reference to an attached remittance statement showing the purpose of the item, reading:

"Interest expense, to interest on notes held by City National Bank, $1800.00."

When on November 25, 1927, the said G. W. Peckham presented said check at said bank to whom it was payable and on whom it was drawn, was the written instruction to apply the same upon the notes payable of this
2304 defendant, the bank records showed that the said G. W. Peckham as an individual had on deposit with said bank $17.72 and the officers of the bank knew that the said G. W. Peckham did not carry a bank account anywhere else, and it was also known, as reflected by the bank's liability records, that said G. W. Peckham on said day was personally indebted to the City National Bank in excess of $18,960.00 and the said G. W. Peckham had personal accounts necessary then to be paid and had a $1500.00 obligation that day to pay so the officers and agents of plaintiff bank charged this defendants account with said check, and contrary to said instructions gave to said G. W. Peckham personal credit therefor with knowledge that said funds were trust funds, and thereupon permitted the said G. W. Peckham to withdraw therefrom on the day of said deposit $1500.00 for his own personal account, and the balance thereof in the next few days, so that on December 2, 1927, the said G. W. Peckham's account was again down to $60.76.

38. Check No. 710. On April 20, 1928, the said G. W. Peckham caused Wichita Royalty Company's check No. 710 to be issued for $1850.00 and on said check and as a part thereof was a reference to an attached remittance statement showing the purpose of the item and reading:

"Notes payable. To apply on indebtedness at City National Bank, interest and principal $1850.00."

At the time said check was to the bank presented G. W. Peckham had on deposit with plaintiff bank but $25.72 with personal obligations to meet, the said G. W. Peckham taking said check so drawn to plaintiff bank whose officers and agents with knowledge of the trust nature of the fund and the lack of authority in Peckham to receive same, charged Wichita Royalty Company's account therewith and gave G. W. Peckham per-
2305 sonal credit therefor, who within ten days thereafter withdrew the entire amount for purposes personal to himself so that on May 10, 1928, G. W. Peckham account was again down to $72.54, and on May 14th, to $47.54, although at said time and at the time of Peckham's presentment of said check to the bank he was personally indebted to the plaintiff bank in excess of nineteen thousand dollars.

39. Check No. 721. On June 1st, 1928, G. W. Peckham caused Wichita Royalty Company's check No. 721 to be issued in the sum of $424.66, drawn on and payable to the plaintiff bank, and on said check and as a part thereof was a reference to a remittance statement showing the purpose of the item reading as follows:

"Interest on notes at City National Bank, $424.66."

That possessed of knowledge as herein elsewhere pleaded, the officers of the bank charged Wichita Royalty Company's account therewith and gave G. W. Peckham personal credit therefor and permitted him to withdraw the same in payment of items of indebtedness of his own.

40. Check No. 591. On March 23, 1917, and at a time when G. W. Peckham's deposit account with the plaintiff bank had gotten to $39.38, and the said G. W. Peckham was personally indebted to the plaintiff bank in excess of twenty-seven thousand dollars, the said G. W. Peckham caused Wichita Royalty Company's check No. 591 to issue for two thousand dollars, drawn on and payable

to the plaintiff bank, and the officers and agents of the plaintiff bank, with knowledge of the trust nature of the fund upon which said check was drawn, and the want of authority in the trustee to receive personal credit therefor, charged Wichita Royalty Company's account therewith and gave to G. W. Peckham personal credit therefor and permitted the intermingling of said
2306 trust fund with the personal funds of the trustee, who, with checks drawn thereon dissipated the same for purpose enuring only to himself.

41. Check No. 541. On October 13, 1926, G. W. Peckham caused Wichita Royalty Company's check to be issued, drawn on and payable to the City National Bank for ten thousand dollars, and with knowledge of the trust nature of the fund upon which said check was drawn, and with knowledge and/or possessed of knowledge of such facts as sufficient to charge the plaintiff bank with inquiry, which if reasonably pursued would have disclosed the full facts that the trustee was without authority to have and/or receive from the cestui que trust all or any part of said ten thousand dollars, said plaintiff bank charged Wichita Royalty Company's account with ten thousand dollars upon no competent instruction other than the check as written and without the City National Bank's indorsement thereon, and permitted said trust monies to be intermingled with the personal funds of the trustee and withdrawn by him upon checks drawn thereon for purposes personal to himself, the officers and agents of plaintiff bank thus actively participating in the wrongful diversion of trust funds to the personal account of G. W. Peckham.

42. Check No. 554. On December 2, 1926, G. W. Peckham caused Wichita Royalty Company's check to be issued, drawn on and payable to the City National Bank for fifteen hundred dollars, and with knowledge of the trust nature of the fund upon which said check was drawn, and with knowledge and/or possessed of knowl-

edge of such facts as sufficient to charge the plaintiff bank with *inquirty*, which if reasonably pursued would have disclosed the full facts that the trustee was without authority to have and/or receive from the cestui
2307 que trust all or any part of fifteen hundred dollars, said plaintiff bank charged Wichita Royalty Company's account with fifteen hundred dollars upon no competent instruction other than the check as written and without the City National Bank's indorsement thereon, and permitted said trust monies to be intermingled with the personal funds of the trustee and withdrawn by him upon checks drawn thereon for purposes personal to himself, the officers and agents of plaintiff bank thus actively participating in the wrongful diversion of trust funds to the personal account of G. W. Peckham.

43. Check No. 557. On December 7, 1926, G. W. Peckham caused Wichita Royalty Company's check to be issued, drawn on and payable to the City National Bank for nineteen hundred twenty dollars, and with knowledge of the trust nature of the fund upon which said check was drawn, and with knowledge and/or possessed of knowledge of such facts as sufficient to charge the plaintiff bank with inquiry, which if reasonably pursued would have disclosed the full facts that the trustee was without authority to have and/or receive from the cestui que trust all or any part of said nineteen hundred twenty dollars, said plaintiff bank charged Wichita Royalty Company's account with nineteen hundred twenty dollars upon no competent instruction other than the check as written and without the City National Bank's indorsement thereon, and permitted said trust monies to be intermingled with the personal funds of the trustee and withdrawn by him upon checks drawn thereon for purposes personal to himself, the officers and agents of plaintiff bank thus actively participating in the wrongful diversion of trust funds to the personal account of G. W. Peckham.

2308 44. Check No. 583. On March 1st, 1927, G. W. Peckham caused Wichita Royalty Company's check to be issued, drawn on and payable to the City National Bank for three hundred one dollars eighty-two cents, and with knowledge of the trust nature of the fund upon which said check was drawn, and with knowledge and/or possessed of knowledge of such facts as sufficient to charge the plaintiff bank with inquiry, which if reasonably pursued would have disclosed the all facts that the trustee was without authority to have and/or receive from the cestui que trust all or any part of said three hundred one dollars eighty-two cents, said plaintiff bank charged Wichita Royalty Company's account with three hundred one dollars eighty-two cents upon no competent instruction other than the check as written and without the City National Bank's indorsement thereon, and permitted said trust monies to be intermingled with the personal funds of the trustee and withdrawn by him upon checks drawn thereon for purposes personal to himself, the officers and agents of plaintiff bank thus actively participating in the wrongful diversion of trust funds to the personal account of G. W. Peckham.

45. On February 6, 1926, W. C. Duncan drew a draft upon the American Mineral Spirits Company through the First National Bank of Chicago, Illinois, for six thousand dollars for payment of a royalty deed from this defendant to said company, which draft was honored and royalty deed accepted, whereupon the Wichita State Bank and Trust Company with which bank the item originated, issued its Cashier's check payable to W. C. Duncan for six thousand dollars, which check was by said W. C. Duncan indorsed payable to order of G. W. Peckham for Bristow Royalty, and which check was then taken by the said G. W. Peckham to the City National Bank, plaintiff, and either possessed with knowl-
2309 edge or of such facts and circumstances which if reasonably inquired into would have disclosed

knowledge that said fund was trust fund and the property of this defendant, said plaintiff bank gave to the said G. W. Peckham personal credit therefor and permitted the same to be dissipated along with the co-mingled funds of G. W. Peckham, and this defendant has never been repaid therefor.

That the plaintiff bank received from G. W. Peckham a check for $3488.33 drawn on and payable to the plaintiff bank and which was by the bank applied in pro tanto reduction of its notes receivable account with Wichita Royalty Company.

46. On or about November 25, 1927, Wichita Royalty Company contracted with Petroleum Royalties Corporation, to sell and the purchaser to buy, an interest in royalty for a consideration of six thousand dollars, which contract was placed with the City National Bank, plaintiff, as escrow agent, together with a mineral deed, and certain notes in said contract described, said plaintiff bank knowing the trust nature of the sale and the trust nature of the proceeds therefrom, wrongfully and without authority permitted the proceeds of said sale, to-wit: six thousand dollars to be deposited to the personal account of G. W. Peckham and by him disbursed for items of indebtedness of his own, whereby this defendant lost six thousand dollars that has not been repaid.

The deferred payments mentioned in said escrow contract as they matured were received by the plaintiff bank and disposed of as follows:

On January 9, 1928, Note No. 1 was paid to the City National Bank, whereupon said bank took a
2310 receipt therefor, executed in the name of this defendant by G. W. Peckham, its trustee, whose individual account was in dire need of funds, his deposit being but $156.35, whereupon the plaintiff bank deposited and gave credit for the $1200.00 so received as trust

funds belonging to this defendant, to the individual account of G. W. Peckham, and thus was a party to the wrongful diversion of said trust funds and the consequent dissipation thereof in G. W. Peckham checking the same out with the knowledge and consent of the plaintiff bank, its officers, agents and employees.

On January 25, 1928, G. W. Peckham's personal account was in sore need of funds, having on deposit but $460.69 and being indebted to the City National Bank personally in excess of nineteen thousand dollars, The City National Bank received as escrow agent the proceeds from the second deferred payment, and with knowledge that the same was trust funds gave G. W. Peckham personal credit therefor upon his bank account and/or were available to this defendant, but were wrongfully diverted by the plaintiff acting with G. W. Peckham, with knowledge of the trust nature of the fund.

On February 28, 1928, G. W. Peckham's bank account had gotten down to $28.18 and he was personally liable to the plaintiff bank for more than nineteen thousand dollars so when the City National Bank received as escrow agent the third deferred payment of $1224.00, instead of giving credit therefor to this defendant, placed the same to the personal credit of G. W. Peckham and thus actively participated as in the other respects above, in the wrongful diversion of said trust funds, permitted the same to be co-mingled with the small balance that Peckham had on hand and checked out for items personal to himself.

47. Check No. 427. On October 8, 1925, G. W.
2311 Peckham caused Wichita Royalty Company's check No. 427 to be issued in the sum of $5500.00 drawn on and payable to the City National Bank, and at said time Wichita Royalty Company was not indebted to the City National Bank in any sum whatsoever, and the officers and agents of the bank knew the trust nature

of the account against which said check was drawn, and knew that the trustee had no personal right to personal credit therefor, but the bank charged Wichita Royalty Company's account with $5500.00 and credited the same to the personal account of G. W. Peckham.

48. Check No. 451. On December 28, 1925, G. W. Peckham caused Wichita Royalty Company's check No. 451 to be issued in the sum of $1250.00 drawn on and payable to the City National Bank, and at said time Wichita Royalty Company was not indebted to the City National Bank in any sum whatsoever, and the officers and agents of the bank knew the trust nature of the account against which said check was drawn, and knew that the trustee had no personal right to the personal credit therefor, but the bank charged Wichita Royalty Company's account with $1250.00 and credited the same to the personal account of G. W. Peckham.

49. Check No. 458. On January 11, 1926, G. W. Peckham caused Wichita Royalty Company's check No. 458 to be issued in the sum of $5000.00, drawn on and payable to the City National Bank, and at said time Wichita Royalty Company was not indebted to the City National Bank in any sum whatsoever, and the officers and agents of the bank knew the trust nature of the account against which said check was drawn, and knew that the trustee had no personal right to personal credit therefor, but the bank charged Wichita Royalty Company's account with $5000.00 and credited the same to the personal account of G. W. Peckham.

2312 50. Check No. 461. On January 18, 1926, G. W. Peckham caused Wichita Royalty Company's check No. 458 to be issued in the sum of $15,769.07, drawn on and payable to the City National Bank, and at said time Wichita Royalty Company was not indebted to the City National Bank in any sum whatsoever, and the officers and agents of the bank knew the trust na-

ture of the account against which said check was drawn, and knew that the trustee had no personal right to personal credit therefor, but the bank charged Wichita Royalty Company's account with $15,769.07 and credited the same to the personal account of G. W. Peckham.

51. That the disbursement of the above funds, the charging of Wichita Royalty Company's account therewith and the crediting of same to the personal account of G. W. Peckham was as originally contemplated, and said monies so withdrawn from the trust account and deposited to the account of the trustee was with the knowledge on the part of the officers and agents of plaintiff bank that said funds so on deposit in Wichita Royalty Company's name were trust funds and that there was a fiduciary relationship between G. W. Peckham and the cestui que trust; that the said G. W. Peckham had no right on authority to cause Wichita Royalty Company's account to be charged with any of the above items and had no right to be charged with any of the above items and had no right or authority to receive personal credit therefor and had no right or authority to make disbursement thereof from his private account for purposes personal unto himself.

52. The officers and agents of the plaintiff bank and particularly its executive J. T. Harrell, knew the authority of G. W. Peckham as trustee for Wichita Royalty Company was limited to performing such acts
2313 on behalf of Wichita Royalty Company as came within the purpose of the association, namely the purchase and sale of all royalties and other oil and gas properties.

Marlborough Addition at no time had any real or potential oil and gas value and at no time was considered oil and/or gas property. The bank, its officers, agents and employees, as well as the impleaded defendant J. T. Harrell *weel* knew and/or by the exercise of reasonable

care should have known and/or had knowledge of such facts as if reasonably inquired into would have enabled them to know that G. W. Peckham was wrongfully diverting trust funds to his private account and for his private use without authority therefor, and said officers and agents in permitting said G. W. Peckham to withdraw said funds from Wichita Royalty Company's account for his personal use co-operated with and contributed to the wrongful diversion with full knowledge and/or legal notice that G. W. Peckham was using for his personal benefit trust funds standing in the name of Wichita Royalty Company.

53. The officers and agents of plaintiff bank knew and/or had legal notice of and/or were possessed of knowledge of such facts as if reasonably inquired into would have enabled them to know that the purpose of the said G. W. Peckham in withdrawing funds from Wichita Royalty Company's account and causing the same to be placed in his personal account was four fold namely, first, in part to pay to plaintiff bank a part of his personal indebtedness to that institution; second, in part to purchase and pay for an interest in a joint adventure between the partners of Marlborough Addition and thus reduce the protanto liabilities of the impleaded defendant and the other parties; third, in part to invest in the Harrell, Peckham et al partnership in the
2314 oil business, and fourth, in part to pay his various and sundry debts.

54. That none of the monies so wrongfully diverted from the account of Wichita Royalty Company to the personal account of G. W. Peckham was ever returned to the company, save and except as shown above, and the said G. W. Peckham died in the fall of 1929 wholly insolvent and is alleged by plaintiff bank to have died leaving all of his entire assets hypothecated to the bank as security for the payment of approximately twenty-five thousand dollars, dying with assets wholly insufficient

to discharge even his personally secured debt to the bank and dying without leaving an estate out of which even in part his obligation to repay this defendant can be made, all of which facts were both known to and anticipated by plaintiff bank, its officers, agents and employees, and/or by the exercise of reasonably care should have been known and anticipated at the respective times monies were wrongfully diverted.

55. That the said G. W. Peckham took personal title to an interest in Marlborough Addition and died still possessed with the legal title thereto to the extent of an undivided 1/2 interest, treating said property as his own from and after the Fall of 1925 until his death in 1929, exercising dominion thereover, executing instruments of conveyance thereof in part and in other ways holding himself out to the world at large as the possessor of the title thereto.

56. It is said by those familiar with the facts, that during his lifetime the said G. W. Peckham is reported to have executed a deed of conveyance by the terms of which there was purported to be conveyed to Wichita Royalty Company a joint stock association, of
2315 which the said G. W. Peckham was trustee and as well executive, and undivided 1/2 interest in and to what is known as Marlborough Addition, but cross-complainants allege that the said G. W. Peckham at no time intended the deed to Wichita Royalty Company to be effective; that the same was never delivered; that the said G. W. Peckham intended but to have the same executed, un-recorded, but still available so that in the event of adversity it could be said that a deed had been executed therefor to Wichita Royalty Company, and that the property was that of the Company, but intending as well that should said venture prosper and he be personally in a position to repay Wichita Royalty Company the monies which he had wrongfully diverted from its account, that then he would continue to assert

personal title to said undivided interest, destroy the deed and deny the Wichita Royalty Company any interest therein, being in a position at all times (so he thought) to assert either his ownership thereof or the company's ownerships so making notations upon the voucher checks so that in the event of adversity and his later recording the deed and seeking to put the property off on the Wichita Royalty Company, that he and G. W. Peckham as individuals would profit in the transaction to the extent of $14,176.20.

That said deed was never delivered and was never recorded and was never accepted by Wichita Royalty Company and the same was and is wholly inoperative and is in all things repudiated by Wichita Royalty Company.

57. And in this connection, Wichita Royalty Company says that aside from said wrongful intention of the said G. W. Peckham the trustee was without power and or authority to bind Wichita Royalty Company in the purchase of a townsite addition or any part
2316 thereof in that the sole and only authority of G. W. Peckham was to deal in royalty interests as its name signifies and or other oil and gas properties. The trustee was therefore without power or authority to bind the company by the execution of a deed. The trustee could not deal with himself as an individual in any manner whatsoever and particularly could he not so deal in a matter entirely beyond the purpose of the organization, and had he in face delivered said deed (which is denied) the same was not and could not be effective as a conveyance.

That the existence of said deed was not known to a single stockholder in Wichita Royalty Company, and G. W. Peckham's personal venture in said suburban addition was unknown to every stockholder of the company.

58. Consistent with all the above and at a time subsequent to the execution of said deed by G. W. Peckham to this Company, the said G. W. Peckham continued to treat said property as his own, exercising dominion thereover and contracting with respect thereto, and just before his death joined other parties at interest in the formation of a corporation known as The Texas Investment Company which purported to take over the assets and assume the liabilities of the theretofore partnership of Marlborough Addition, the said G. W. Peckham never intended Wichita Royalty Company to own or possess Marlborough Addition or an interest therein in the event the same should prove profitable intending personally to repay the company monies which he had wrongfully diverted from its treasury and expended by him in the payment of his own interest in said addition, as well as other obligations personal to himself, all with the knowledge of the bank, its officers and agents and/or such notice to them as was sufficient to put them upon
2317 inquiry as that if reasonably inquired into would have disclosed to them such knowledge, and their failure so to inquire was negligence on their part.

59. Upon the formation of The Texas Corporation known as the Texas Investment Company of Wichita Falls, Texas, said corporation assumed the liabilities of the theretofore partnership of Marlborough Addition constituted as above shown, which partnership was then indebted to the plaintiff bank in a substantial sum of money, and upon the death of the said G. W. Peckham. his successor as trustee, in the manner at the time, under the circumstances, and coerced by representations shown in his own separate answer herein, joined in said corporation and accepted stock therein and in turn pledging said stock as security to the plaintiff bank for the corporations debt, and indorsing said corporation's note by subscribing this defendant's name thereto which was ultra vires to the powers of the said trustee beyond the

purposes of the association and null and void with all facts and circumstances herein pleaded well known to the plaintiff bank, its officers and agents.

60. It is perforce of this indorsement that plaintiff brings suit for $14,596.00 as shown by its petition. This defendant is not liable thereon because of all the facts here and elsewhere averred and because; The said E. E. Scannell was wholly without power and/or authority to bind this defendant by indorsing said corporation's note; said trustee was wholly without power to bind this defendant in any attempt to accept stock in said corporation; this defendant had no interest in Marlborough Addition in exchange for which it could receive stock in said corporation, the acts of said former trustee being a legal fraud and in excess of his authority; said indorsement was obtained upon the representations
2318 shown in the separate answer of E. E. Scannell referred to and made a part hereof; said corporation had for its purpose matters wholly foreign to the purpose of this defendant and in no way related thereto, all of which facts were with the knowledge of the officers and agents of said plaintiff bank.

Wichita Royalty Company was never a party to any obligation due by Marlborough Addition as such and/or its constituent members and/or its successor in interest, The Texas Investment Company of Wichita Falls, Texas, until subsequent to the death of the said G. W. Peckham, and under circumstances and because of the representations set up in the separate answer of E. E. Scannell, said successor in trust of this defendant indorsed said corporation's note and there was no consideration whatsoever therefor, and said act was beyond the powers of the said trustee to do and perform and bind this defendant thereby. Said private corporation so succeeding in interest to the partnership of Marlborough Addition was chartered under the laws of Texas for the purpose of the purchase and sale and subdivision of real property in towns, cities and villages and their suburbs, and had naught to

do with royalty and/or other oil and gas interests, and the purposes of said corporation were of such a nature and the purposes of this defendant were of such a character as that no trustee of this defendant could competently contract in the name of this defendant for the acquisition of certificates of stock in said corporation, nor could he competently create a liability upon this defendant by indorsing its name upon the obligations of said corporation, there being no other consideration to support the indorsement and none existing, and the indorsement not being that of this defendant be-
2319 cause of the lack of authority of the agent to bind the principal.

The issuance of certificates of stock in said Texas Corporation by the said J. T. Harrell and others to Wichita Royalty Company (if in fact any certificates were ever issued) was for the purpose of foreclosing all of the matters and things above set out and to obtain the entire assets of said corporation for the individual executives of the City National Bank, namely, J. T. Harrell and J. A. Kemp. Accordingly and at a time when the assets of said Texas Investment Company, successors to Marlborough Addition, exceeded $140,000.00 the said City National Bank alleges that it foreclosed its pledge upon the entire assets of said corporation and obtained title to the same for a consideration of but twenty thousand dollars which in fact was subject to but approximately forty thousand dollars indebtedness against the assets, thus giving to the plaintiff bank a net value thereby in excess of eighty thousand dollars, with the intention thereby to cut off any interest therein of this defendant to foreclose this defendant's right to challenge the recoverability of the wrongful diversion of funds as above set out and for the executives of said bank personally to receive the benefits therefrom.

61. As shown above the said J. T. Harrell and associates were engaged in the oil business as a side line pure-

ly incidental and collateral and in any way connected with the banking business.

Accordingly the said J. T. Harrell and associates (one of whom was as well as executive of the City National Bank at the time) had an interest in royalty which they had negotiated concerning with the said G. W. Peckham, but the Wichita Royalty Company did not have
2320 sufficient funds on deposit with which to pay the substantial price which the said executives wanted for the royalty, so contrary to the theretofore established practice of the bank to take a deed of trust as security for any loan made to the royalty company, the said J. T. Harrell on January 16, 1926, loaned to G. W. Peckham in the name of Wichita Royalty Company, the sum of $15,800.00 and placed the same to the credit of Wichita Royalty Company, and simultaneous therewith though dated two days subsequent thereto, the said G. W. Peckham caused this defendant's check No. 461 to be issued in the principal sum of $15,769.07, payable to the City National Bank of Wichita Falls, Texas, and delivered the same to the said J. T. Harrell who thereupon charged the same against the account of this defendant and disbursed the proceeds thereof between himself and his other partners in the oil business, and while theretofore it had been the policy of the company to buy small royalties from time to time, yet because of the wrongful diversion of its funds into the personal account of G. W. Peckham and his venture into the Marlborough Addition enterprise as above shown, the company was unable, even though with the twenty-five thousand dollars and more subsequently borrowed, to buy any additional properties.

62. That all of the times above mentioned and during all of the transactions above outlined, plaintiff bank, its officers and agents and employees, knew that this defendant was a joint stock association organized for the sole and only purpose of dealing with royalty and other oil and gas properties and had limited the authority of

the trustee thereof to dealings with respect thereto, and that the said respective trustees of this defendant were not at any time nor to any extent authorized
2321 and/or empowered to bind this defendant upon any matter whatsoever, save and except those matters strictly limited to the royalty and/or oil and gas business and possessed with such knowledge and charged therewith as a matter of law because of the record declaration of trust specifically setting out such limitation authority and dealing with said respective trustees in the capacity as such, and thereby possessed with knowledge and charged with notice of the agency of said respective trustees, the said officers and agents of plaintiff bank and the impleaded defendant, T. T. Harrell, all knew that each and every one of the above described transactions whereby monies were charged against this defendant's account and credited to the respective accounts of others and/or diverted from the use of this defendant and beyond the purpose of its organization, was ultre vires; that the funds standing in the name of this defendant in plaintiffs bank were trust funds belonging to some 1300 individuals holding beneficial interest therein as evidenced by certificates; that the purpose of the said G. W. Peckham were as above shown; that the crediting account of the said G. W. Peckham with said respective items would result in the total loss thereof to this defendant and to its stockholders, and that the assets of this defendant would be dissipated and the valuable properties taken by foreclosure, but with such knowledge said officers and agents of said plaintiff bank actively participated with the said G. W. Peckham in each and every one of the various transactions above described and were parties to each and every act of the said G. W. Peckham whereby he became personally obligated to this defendant in the aggregate total as composed of the above items.

63. That the said G. W. Peckham is not made a party hereto for the reason that the subscribing affiant
2322 hereto is informed that the estate of the said G. W. Peckham is insolvent, and is informed that

the City National Bank alleges that it possesses a first and prior lien upon all of the assets of the said G. W. Peckham, deceased, to secure an indebtedness in excess of the value of such assets, but the said J. T. Harrell is solvent and was the executive of the plaintiff bank who negotiated with G. W. Peckham the respective loans above described, credited to the account of this defendant and disbursed with the permission and active participation of the officers and agents of plaintiff bank in the manner and for the purposes above shown, all of which funds were co-mingled with the personal funds of others and are beyond tracing and have been dissipated with plaintiff bank profiting thereby to the extent above shown, and with the said J. T. Harrell's personal liability upon the Highland Irrigation Company's notes being substantially reduced thereby.

64. That the items for which the said plaintiff bank and the impleaded J. T. Harrell are jointly and severally liable to this defendant are reflected in summarized form upon an exhibit attached hereto and made a part hereof.

65. That the twenty-two thousand dollar note sued upon is in renewal of the original loans above described as having been created January 16, 1926, and March 6, 1926, respectively.

66. Cross complainants say that the difference between the monies deposited in plaintiff bank and those properly withdrawn therefrom with authority of Wichita Royalty Company totals the aggregate amount shown on the attached summarized statement for which Wichita Royalty Company sues.

67. Plaintiff is given notice to produce upon the trial hereof all original books, papers, accounts and
2323 instruments in writing relating to or concerning Marlborough Addition and or The Texas Investment Company of Wichita Falls, Texas, original

ledger sheets both direct and contingent showing the liability of account to plaintiff of G. W. Peckham as an individual, of Marlborough Addition and/or the account by whatever name listed showing the Marlborough transactions and/or The Texas Investment Company of Wichita Falls, Texas, direct liability ledger of Wichita Royalty Company and the deposit account of Wichita Royalty Company, G. W. Peckham, Marlborough Addition, The Texas Investment Company, evidence of such security to plaintiff by G. W. Peckham as plaintiff claims existed as security to it in the payment by Peckham of his debt to the bank; original deeds of trust executed by this defendant given as security to plaintiff bank for any item of indebtedness.

68. Cross compliainants say that not a single stockholder of Wichita Royalty Company ever knew of any of the transactions between G. W. Peckham as an individual with himself as trustee of the Wichita Royalty Company, and no stockholder ever knew of any of the facts herein alleged, said facts being withheld by the said G. W. Peckham from the stockholders of the trust.

69. That none of the checks drawn on and payable to the plaintiff bear the indorsement of the City National Bank.

70. Cross complainants say plaintiff bank, its officers, agents and employees were guilty of negligence in the acts of omission and commission herein elsewhere pleaded, and said bank, its officers, agents and employees failed to observe that degree of care toward Wichita Royalty Company, which an ordinary prudent banker would have used under the same or similar circumstances; and all of the acts and omissions upon the part of said bank, its agents and employees as herein elsewhere averred, proximately resulted in Wichita Royalty Company's loss of the monies herein sued for, and an ordinary prudent banker possessed of

2324

the knowledge which plaintiff officers and agents had would have reasonably anticipated the results that have followed; the plaintiff bank in the particulars herein elsewhere mentioned breached its contract with its depositors the Wichita Royalty Company, and but for its active participation with the trustees in *his* wrongful acts the loss would not have occurred, Wichita Royalty Company's loss proximately resulting from the co-operation and or contribution of the plaintiff bank, its officers and agents to the acts and conduct of the trustee.

31. Cross complainants have and do not disclaim all interest in Marlborough Addition and or in Texas Investment Company of Wichita Falls, Texas, and make such tenders and offer to do and perform such equities as to the Court may seem proper.

The State of Texas,
County of Wichita.

E. E. Scannell, being duly sworn on oath says that he is a stockholder in and the present trustee of Wichita Royalty Company, and that the facts above averred are true.

E. E. SCANNELL.

Sworn to and subscribed before me this the 9th day of April, A. D. 1931.

PAULINE NOLTE,
Notary Public, Wichita County, Texas.

(Seal)

Wherefore having fully answered and having fully set out the substantial facts with respect to the many transactions herein at issue, the plaintiff and the inter-pleaded defendant J. T. Harrell having heretofore appeared and answered herein, cross complainants pray that plaintiff bank take nothing as against them; that Wichita Royalty Company recover of and from the City National Bank of Wichita Falls, Texas, and

2325

from J. T. Harrell, jointly and severally, the respective sums of money above shown, with interest thereon at the legal rate from and after the respective times said monies were charged against the account of Wichita Royalty Company and/or that said items plead be credited upon the twenty-two thousand dollar obligation sued upon by plaintiff as of the several times of the charging by plaintiff of said respective checks to Wichita Royalty Company's account, with judgment for the balance of monies so charged against said account, with interest thereon from and after the respective times of withdrawal; cross-complainants further pray for costs of suit, interest as is provided by law, and for general and special, legal and equitable relief, and as in honor bound will ever pray.

KILGORE & ROGERS,
Attorneys for Wichita Royalty Company.

Summary of Pleading Wichita Royalty Company in Account with George W. Peckham and/or The City National Bank and/or J. T. Harrell.

Check	Par	Date	Deposited to Account of	Dr.	Cr.
	13	1- 1-26	WRC	$15,000.00	
	13	3- 1-36	WRC	25,000.00	
427	47	10- 8-25	GWP		$5,500.00
451	48	12-28-25	GWP		1,250.00
458	49	1-11-26	GWP		5,000.00
461	50	1-18-26	GWP		15,769.07
478	15	3- 6-26	GWP		17,623.70
479	16	3-10-26	GWP		6,000.00
485	17	3-31-36	GWP		7,500.00
495	31	4-23-26	CNB		300.00
503	18	5-20-26	GWP		3,000.00
506	31	6- 2-26	CNB		500.00
507	19	6- 2-26	GWP		1,500.00

Check	Par	Date	Deposited to Account of	Dr.	Cr.
510	20	6-16-26	GWP		4,500.00
519	21	7-15-26	GWP		1,000.00
521	31	7-17-26	CNB		300.00
525	22	8- 2-26	GWP		4,000.00
531	31	8-30-36	CNB		500.00
532	23	8-27-26	GWP		4,357.58
540	31	10-19-26	CNB		300.00
541	41	10-14-26	GWP		10,000.00
550	24	11-20-26	GWP		7,500.00
	32	11-26-26	CNB	$500.00	
554	42	12- 2-26	GWP		1,500.00
556	25	12-22-26	GWP		700.00
556-A	26	1- 4-27	GWP		538.16
557	43	12-15-26	GWP		1,920.00
569	31	1-15-27	CNB		300.00
571	27	1-19-27	GWP		2,000.00
579	28	2-19-27	GWP		2,500.00
582	33	3- 8-27	GWP		500.00
583	44	3-16-27	GWP		301.82
584	31	3- 3-27	CNB		500.00
591	40	3-23-27	GWP		2,000.00
599	31	4-23-27	CNB		300.00
516	31	6- 8-27	CNB		500.00
620	34	6-18-27	GWP		1,200.00
628	31	7-16-27	CNB		1,500.00
635	35	8-16-27	GWP		1,500.00
	32	8-31-27	CNB	$500.00	
650	36	10-15-27	GWP		2,400.00
	32	10-19-27	CNB		1,336.00
657	37	11-25-27	GWP		1,800.00
	32	11-25-27	CNB	1,500.00	
	46 (EC)	12- 5-27	GWP		2,400.00
	46 (EC)	1- 9-28	GWP		1,200.00
	46 (EC)	1-25-28	GWP		1,224.00
682	31	1-28-28	CNB		2,000.00
	45 (CC)	2-15-28	GWP		6,000.00
	32	2-15-28	CNB	3,485.33	

Check	Par	Date	Deposited to Account of	Dr.	Cr.
	36 (EC)	2-29-28	GWP		1,224.00
710	38	4-23-28	GWP		1,850.00
717	31	5-17-28	CNB		220.00
721	39	6- 1-28	GWP		424.66
733	31	7-23-28	CNB		220.00
752	31	9-27-28	CNB		424.66
768	31	12- 4-28	CNB		2,000.00
791	31	2-23-29	CNB		1,500.00
814	31	6- 8-29	CNB		1,500.00
824	31	7-15-29	CNB		212.49
836	31	8-29-29	CNB		1,000.00
856	31	11-23-29	CNB		1,500.00
880	29	1-25-29	GWP		1,500.00
890	31	2-24-30	CNB		1,000.00
898	31	4-10-36	CNB		1,000.00
908	30	5-14-30	GWP		500.00
920	31	6-18-30	CNB		1,500.00
930	31	7-16-30	CNB		
				$45,985.33	$153,151.56

Excess of payments over receipts $107,166.23

Indorsed: Number 24549-B, City National Bank of Wichita Falls, Texas, vs. Wichita Royalty Company, et al. Second Amended Original Answer, Cross Action and Inter-pleader of Wichita Royalty Company. Filed: April 27, 1931, Mrs. A. B. Eichelberger, District Clerk, Wichita County, Texas.

2329 JUDGMENT.

Filed February 15, 1932.

In the 78th District Court of Wichita County, Texas.

City National Bank of Wichita Falls, Texas.
vs.
Wichita Royalty Company, Et Al.

February 25, A. D. 1932.

On the 15th day of February A. D. 1932, this cause was regularly called for trial, Honorable Vincent Stine, Judge of the 97th Judicial District of Texas, presiding in exchange with Honorable W. W. Cook, Judge of the 78th Judicial District of Texas. Thereupon, the plaintiff, the City National Bank of Wichita Falls, appeared by its attorney and announced ready for trial. Thereupon, came the defendants, the Wichita Royalty Company and its trustee, whose trustee is E. E. Scannell, by their attorney and announced ready for trial. Also came the City National Bank of Wichita Falls and J. T. Harrell, defendants in the cross action brought by the Wichita Royalty Company and announced ready for trial. Also came E. E. Scannell by person and by attorney, and as representative of the shareholders of the Wichita Royalty Company and announced ready for trial. Also came the interpleader defendants, to-wit: Flora A. Kemp and Chas. I. Francis, independent executors under the last will and testament of J. A. Kemp, deceased; W. H. Peckham, individually and as administrator of the estate of G. W. Peckham, deceased. All parties being in Court in person and by attorneys, plaintiff and defendants and interpleaded defendants, all announced ready for trial; and a jury having been demanded, thereupon came twelve good and lawful men, to-wit: *A. H. Miller* and eleven others, who being duly selected, sworn and impaneled to try said cause; and after hearing the pleadings, the evidence

and argument of counsel returned into Court on the 25th of February 1932 their verdict, in response to the peremptory instruction given to them by the Court, which is as follows, to-wit:

2330 Gentlemen of the Jury:

You are instructed to return a verdict in favor of the plaintiff and a ainst the defendant, Wichita Royalty Company, upon the following form:

"We, the jury, find in favor of the plaintiff, the City National Bank of Wichita Falls, Texas, and against the Wichita Royalty Company for the amount of the note of $22,000.00, with interest and attorney's fees which note is dated June 26, A. D. 1930, signed by the Wichita Royalty Company and payable to the City National Bank.

We, the jury, further find in favor of the City National Bank and against the Wichita Royalty Company for the sum of $14,596.00, being one-half of the balance due upon the note signed by the Texas Investment Company and payable to the order of the City National Bank and indorsed by the Wichita Royalty Company, J. T. Harrell and J. A. Kemp.

We, the jury, further find in favor of the plaintiff, the City National Bank, and the defendant, J. T. Harrell, upon the cross action of the defendant, the Wichita Royalty Company.

We, the jury, further find in favor of the Defendants, Flora A. Kemp and Chas. I. Francis as independent executors of the Estate of J. A. Kemp, deceased, and W. H. Peckham individually and as administrator of the Estate of G. W. Peckham, deceased, upon the cross action filed against them by the City National Bank and J. T. Harrell; and we further find in favor of J. T. Harrell and against the City National Bank on the cross action filed against him by said bank.

2331 We further find in favor of the defendant, E. E. Scannell and against the City National Bank upon the indebtedness sued for.

VINCENT STINE,
Judge Presiding.

We, the jury, hereby return into Court our verdict as hereinabove directed.

A. H. MILLER,
Foreman.

February 25, 1932.

Which verdict was returned by the Court and ordered filed. To which action of the Court, in giving the jury a peremptory instruction, the defendant Wichita Royalty Company and the cross-complainants, Wichita Royalty Company and its shareholders, in open Court duly excepted.

It is, Therefore, Ordered, Adjudged and Decreed by the Court that the plaintiff, the City National Bank of Wichita Falls, a corporation, do have and recover of and from the defendants, Wichita Royalty Company and E. E. Scannell, its trustee, as such trustee but not personally, the sum of $43,349.10, being the aggregate amount of the principal, interest and attorneys' fees due upon the notes sued upon, to-wit: One note dated June 26, 1930, for $22,000.00, and one-half of the balance of the note of the Texas Investment Company indorsed by the Wichita Royalty Company.

It is Further Ordered, Adjudged and Decreed by the Court that this judgment bear interest at the rate of 8% per annum from date until paid, and that execution may issue against any of the assets owned or held by the Wichita Royalty Company and/or its trustee as such.

It is Further Ordered, Adjudged and Decreed that the defendants, Wichita Royalty Company, and or
2332 E. E. Scannell, its trustee, take nothing against the plaintiff, the City National Bank of Wichita Falls, and the interpleaded defendant, J. T. Harrell, upon the interpleader and cross action of the Wichita Royalty Company; and that the said plaintiff, The City National Bank of Wichita Falls, and J. T. Harrell go hence without day and recover of and from the said Wichita Royalty Company its cost in this behalf incurred, for which let execution issue.

It is Further Ordered, Adjudged and Decreed that the plaintiff, the City National Bank, take nothing against E. E. Scannell, individually, and that E. E. Scannell go hence without day and recover of and from the plaintiff his costs.

It Is Further Ordered, Adjudged And Decreed by the Court that the plaintiff take nothing against the defendants, Flora A. Kemp and Chas. I. Francis, independent executors under the last will and testament of J. A. Kemp, deceased, and/or against W. H. Peckham, individually and as administrator of the estate of G. W. Peckham, deceased, and J. T. Harrell, the interpleaded defendants, but that the said interpleaded defendants, Flora A. Kemp and Chas. I Francis, executors aforesaid, W. H. Peckham, individually and as administrator aforesaid, and J. T. Harrell go hence without day and recover all costs in this behalf incurred against the plaintiff herein.

It Is Further Ordered, Adjudged And Decreed by the Court that the interpleaded defendant, J. T. Harrell, take nothing against the defendants, Flora A. Kemp and Chas. I. Francis, independent executors under the last will and testament of J. A. Kemp, deceased, and/or against W. H. Peckham, individually and as administrator of the

estate of G. W. Peckham, deceased; but that such defendants, Flora A. Kemp and Chas. I. Francis, executors aforesaid, and W. H. Peckham, individually and as administrator aforesaid, go hence without day with their cost, insofar as the cross action of J. T. Harrell is concerned.

2333

It Is Further Ordered, Adjudged And Decreed by the Court that all relief except herein specifically granted be and is hereby denied, and that the officers of the Court have execution against the respective parties, plaintiff or defendants, for the respective costs incurred by such parties.

To which action of the Court the defendant, Wichita Royalty Company and cross complainants, Wichita Royalty Company and its shareholders, in open Court duly excepted, and gave notice of appeal to the Court of Civil Appeals for the Second Supreme Judicial District of Texas at Fort Worth, Texas.

This February 25, 1932.

VINCENT STINE,
Judge Presiding.

O. K. form:
GUY ROGERS,
O. K. MORROW,
JOHN DAVENPORT.

Indorsed: No. 24549-B, City National Bank vs Wichita Royalty Company. Judgment Recorded in Volume 8 page 472, Minutes of the 78th District Court, Wichita County, Texas. Filed: February 25, 1932.

2334 CITATION.

Filed June 18, 1936.

No. 24549-A.

The State of Texas.

The Sheriff or any Constable of Wichita County, Texas, Greetings:

You Are Hereby Commanded To Summon The City National Bank of Wichita Falls, Texas, a corporation, City National Bank in Wichita Falls, Texas, a corporation, J. T. Harrell individually and as Trustee of The City National Bank of Wichita Falls, Texas, W. H. Peckham administrator of the Estate of G. W. Peckham, deceased, Texas Investment Company, a corporation, E. A. Deaton, L. H. Cullum, Leslie Humphrey, Tarlton Morrow, Jack Jeffus, Oral Jones, Frank Kell, Joe Kell, J. J. Perkins, C. W. Snider and F. P. Timberlake to be and appear before the Honorable 30th District Court of Wichita County, Texas, at the next regular term thereof to be holden at the Court House in Wichita Falls, Texas, on the 13th day of July, 1936, then and there to answer the Third Amended Original Answer, Cross Action and inter-pleader of Wichita Royalty Company and E. E. Scannell, its trustee, filed June 18th, 1936, in a suit in said Court wherein The City National Bank of Wichita Falls is plaintiff, Wichita Royalty Company, a trust estate, E. E. Scannell, individually and as trustee, Guy Rogers individually and as trustee under the will of L. B. Rogers, deceased, Chas. L. Black, W. H. Peckham administrator of the estate of George W. Peckham, deceased, the Humble Oil & Refining Company, a corporation, and The Texas Company, a corporation, are defendants, and wherein by said Third Amended Original Answer, Cross Action and Interpleader so filed by Wichita Royalty Company and E. E. Scannell its trustee, The City National Bank of Wichita Falls, Texas, City National Bank in Wichita Falls,

Texas, both corporations J. T. Harrell, individually and as trustee for The City National Bank of Wichita
2335 Falls, Texas, W. H. Peckham as Administrator of the Estate of George W. Peckham, deceased, William Peckham and George Peckham, minor sons of G. W. Peckham, deceased, Robert W. Peckham, Mrs. Hazel D. Peckham, Texas Investment Company, a Corporation, E. A. Deaton, L. H. Cullum, Leslie Humphrey, Tarlton Morrow, Jack Jeffus, Oral Jones, Frank Kell, Joe Kell, J. J. Perkins, C. W. Snider, E. P. Timberlake, the Humble Oil & Refining Company, a corporation, The Texas Company, a corporation, and the Continental Oil Company, a corporation, are sued by Cross-action and Interpleader, the file Number of said suit being 24549-B, and the nature of said amended answer, Cross-Action and Inter-pleader being as follows, to-wit:

* * * *

(Same being omitted as per agreement between attorneys to shorten the record filed in U. S. Dist. Court July 14, 1937.)

* * * *

Sheriff's Return.

Came to hand on the 19th day of June, A. D. 1936 at 10 o'clock A. M., and executed the 19th day of June A. D. 1936 by delivering to The City National Bank of Wichita Falls, Texas, a corporation, by serving J. T. Harrell, its President; The City National Bank in Wichita Falls, Texas, a corporation, by serving J. T. Harrell, its President; J. T. Harrell, individually and as Trustee of the City National Bank of Wichita Falls, Texas; W. H. Peckham, administrator of the estate of G. W. Peckham, deceased; Texas Investment Company, a corporation, by serving J. T. Harrell, its Vice-Pres; E. A. Deaton, Jack Jeffus, Frank Kell, Joe Kell, J. J. Perkins, C. W. Snider, E. P. Timberlake, Leslie Humphrey, and this writ was further
2336 executed on the 20th day of June, 1936, by delivering to Oral Jones, L. H. Cullum and Tarlton

Morrow, the within named defendants, each in person, a true copy of this writ.

Fees—Serving 17 copies	$17.00
Mileage 4	.30
Total	$17.30

PAT ALLEN,
A. J. CHAMBERS,
Deputy Sheriff, Wichita County, Texas.

Indorsed: Number 24549-A, The City National Bank of Wichita Falls, Texas vs. Wichita Royalty Company, et al Citation. Issued: June 18, 1936. R. L. Sanderford, District Clerk, Wichita County, Texas, by Edna Berner, Deputy.

NOTICE TO SERVE NON-RESIDENT DEFENDANTS HAZEL D. PECKHAM, ET AL.

2337 Filed July 11, 1936.

In the 30th District Court of Wichita County, Texas.

No. 24549-A.

The State of Texas.

To: Hazel D. Peckham, Wm. Peckham, Geo. Peckham, El Paso County, Colorado: Greeting:

Whereas, Wichita Royalty Company, a trust estate, and E. E. Scannell, its Trustee, of Wichita Falls, Wichita County, Texas, did on the 18th day of June, 1936, file in the 30th District Court of Wichita County, State of Texas, their Third Amended Original Answer, Cross-Action and

Inter-Pleader, in a suit in said Court, No. 24549-A on the Civil Docket of said Court wherein the City National Bank of Wichita Falls, Texas, is plaintiff, Wichita Royalty Company, a trust estate, E. E. Scannell, individually and as trustee, Guy Rogers individually and as Trustee under the will of L. B. Rogers, deceased, Chas. L. Black, W. H. Peckham, administrator of the estate of George W. Peckham, deceased, the Humble Oil & Refining Company, a corporation, and The Texas Company, a corporation, are defendants, and Wherein by said Third Amended Original Answer, Cross-Action and Interpleader so filed by Wichita Royalty Company, and E. E. Scannell, its Trustee, The City National Bank of Wichita Falls, Texas, City National Bank in Wichita Falls, Texas, both corporations, J. T. Harrell, individually and as Trustee for The City National Bank of Wichita Falls, Texas, W. H. Peckham as administrator of the estate of George W. Peckham, deceased, William Peckham and George Peckham, minor sons of G. W. Peckham, deceased,
2338 Robert W. Peckham, Mrs. Hazel D. Peckham, Texas Investment Company, a corporation, E. A. Deaton, L. H. Cullum, Leslie Humphrey, Tarlton Morrow, Jack Jeffus, Oral Jones, Frank Kell, Joe Kell, J. J. Perkins, C. W. Snider, F. P. Timberlake, the Humble Oil & Refining Company, a corporation, The Texas Company, a corporation, and the Continental Oil Company, a corporation, are sued by Cross-action and Inter-pleader, and the Nature of said Amended Answer, Cross-action and Interpleader being substantially as follows, to-wit—

As fully set out in the Defendants Third Amended Original Answer, Cross-action and Interpleader now on file in this office a certified copy of which accompanies this notice, describing more fully the demands of the Defendant to which reference is here made.

And Whereas, the said Amended Answer, Cross-action and Interpleader will be heard by the said 30th District Court of Wichita County, Texas, at Wichita Falls, Texas,

on the second Monday in July A. D. 1936, the same being the 13th day of July A. D. 1936.

These are Therefore, to require you to appear at the time and place above stated, and answer said Defendants Third Amended Original Answer, Cross-action and Inter-pleader, of which said Defendants Third Amended Original Answer and Interpleader, a certified copy accompanies this notice.

Given under my hand and seal of said Court, at office in Wichita Falls, Texas, this the 29th day of June, 1936.

R. L. SANDERFORD,
(Seal) District Clerk, Wichita County, Texas.
By EDNA BERNER,
Deputy.

2339 Return.

State of Colorado,
County of El Paso.

Personally Appeared before me, the undersigned authority R. C. Glasier, who being by me duly sworn, deposes and says: That on the 2nd day of July, 1936, at 10:00 o'clock A. M., in Colorado Springs, County of El Paso, State of Colorado, he delivered to Hazel D. Peckham, William Peckham, and George Peckham, the Defendants each in person, a true copy of this Notice, with a certified copy of the Plaintiff's Petition accompanying same; and further, that he is an adult male, and is in no manner interested in this suit.

R. C. GLASIER.

Sworn to and subscribed before me, this 2nd day of July A. D. 1936.

(Seal) WARREN H. SMITH,
Notary Public.

My commission expires Oct. 5, 1936.

Indorsed: Number 24-549-A, The City National Bank of Wichita Falls, Texas, a corporation vs. Wichita Royalty Company, et al. Notice to Serve Non-Resident Defendant. Filed *June* 11, 1936, R. L. Sanderford, District Clerk, Wichita County, Texas, by Kathryn Exley, Deputy.

INTERROGATORIES PROPOUNDED TO J. J. PERKINS BY THE WICHITA ROYALTY COMPANY AFTER REMOVAL UNDER RULE 58 IN EQUITY.

Filed in U. S. District Court August 28, 1936.

2340 City National Bank of Wichita Falls, Texas.
vs. No. 358 In Equity.
Wichita Royalty Company, et al.

Wichita Royalty Company and E. E. Scannell, its trustee, under Equity Rule 58, propound the following interrogatories to be answered by the impleaded defendant J. J. Perkins:

1. Are you the J. J. Perkins who is a Director in the City National Bank of Wichita Falls, Texas?

2. Over what period of time have you been such Director?

3. During such period were you generally familiar with the operations of the Bank?

4. During 1923 and subsequent years did such Bank have a Committee to consider and pass upon applications for loans?

5. Was such Committee composed of members of the Board of Directors of said Bank?

6. How often did the personnel of said Committee change?

7. How often did it meet?

8. Give in fullest detail the purpose, function, policy and practices of said Committee.

9. Were all applications to the Bank for loans, whether large or small, whether secured or unsecured, submitted to the Committee for consideration?

10. To what extent did the Board of Directors leave to J. T. Harrell the making of loans and their renewal without the consideration and approval by said Committee?

2341 11. To what extent, if any, did said Committee consider and pass on the renewal of an existing loan?

12. With respect to a customer of the Bank who had an established credit rating, was J. T. Harrell authorized to conclude a loan with such customer without first getting it approved by the Board?

13. Did J. T. Harrell conclude any loans without having the application first submitted to and approved by the Committee?

14. To what extent did the Committee govern the renewal of existing paper?

15. Were minutes or memoranda kept of the meetings of such Committee? If so, kindly attach such minutes or memoranda, showing the record of the Board's action with respect to loans made by the Bank to Wichita Royalty Company and/or G. W. Peckham during 1923 and subsequent years.

16. Into what matters did the Committee inquire in determining what action to take upon an application for a loan? Detail fully.

17. In considering such application for a loan, did the Committee ask for and obtain a financial statement in writing of the Bank's proposed creditor?

18. Kindly attach to replies as your answer hereto, all financial statements given to the Bank by Wichita Royalty Company and by George W. Peckham during 1923 and subsequent years.

19. If you have not attached such statements, then answer in detail why you have not done so.

20. In passing upon an application for a loan did the Committee undertake to ascertain how much the proposed creditor already owed the Bank?

21. Did said Committee inquire as to what collateral, if any, was to be given?

2342 22. Did said Committee inquire as to who was to indorse said obligation?

23. Did said Committee inquire into and obtain a financial statement in writing of the proposed indorser upon a proposed loan?

24. As to a loan of from $10,000.00 to $50,000.00 did said Committee ordinarily inquire and ascertain the purpose for which the money was desired by the proposed creditor and whether all of the funds sought to be borrowed would be needed for such purpose?

25. Did said Committee consider whether the purpose for which the loan was sought was probably a sound financial purpose, from the standpoint both of borrower and the Bank?

26. Did the Committee ordinarily inquire into greater detail as to the purpose of the loan, the ability of the borrower to repay, and the soundness of the entire transaction with respect to a loan of from $10,000.00 to $50,000.00 than with respect to a small loan?

27. If you have stated that the Committee did not inquire into all or any of the above, then kindly state as to what, if anything, the Committee did inquire, and how it determined whether the Bank should make the loan.

28. Did the Committee generally inquire of the executive officer presenting the application for loan as to his view with respect to whether or not the loan should be made?

29. Did the Committee inquire of the executive officer presenting the application as to whether such officer or any other officer was personally interested in business ventures with the proposed borrower, either as to investments theretofore made or to be made with the proceeds of the loan?

30. Did you, while serving on such Committee, know or believe that J. T. Harrell was interested with G. W. Peckham in the venture known as Marlborough Addition?

2343 31. Did the Committee ordinarily attach weight to such executive officer's recommendation as to whether or not the loan should be approved?

32. In your opinion, as a banker of long experience and as a businessman of vast experience, what facts make a loan good, doubtful or bad? Answer fully.

33. Should an application be from an agent to borrow money in the name of his principal, did the Committee inquire into the authority of the agent to bind his

principal by the execution of a note for the purpose for which the funds were to be used?

34. What inquiry, if any, did the Committee make with respect to the authority of G. W. Peckham to borrow money in the name of Wichita Royalty Company?

35. As a result of such inquiry, if any, did the Committee ascertain that Peckham was trustee of Wichita Royalty Company by a virtue of a recorded Declaration of Trust?

36. If you have answered Interrogatory No. 35 yes, then did such Committee procure and read such Declaration of Trust or obtain advice from an executive officer of the Bank that such written instrument had been read?

37. Did the Committee or within your knowledge the bank obtain legal advice as to the authority of Peckham to borrow money in the name of Wichita Royalty Company and for what purpose could he so borrow? If so, when was such advice given and by whom, and if in writing, attach such opinion to your answer.

38. Were you a member of and in attendance upon such Committee at any time or times when applications for loans or renewals were made by Wichita Royalty Company, G. W. Peckham, Marlborough Addition, Texas Investment Company and/or J. T. Harrell? Explain fully.

39. If you have answered question No. 38 yes, then detail what inquiry the Committee made with re-
2344 spect to each application and what information the Committee obtained. Detail fully.

40. What was said in your presence by officers and executives of the Bank or its said Committee with respect to Wichita Royalty Company's loan lingering in the

Bank as a liability due the Bank over a period of years without ever being reduced below $25,000.00?

41. What was said in your presence by officers and executives of the Bank or its said Committee with respect to G. W. Peckham's loan lingering in the Bank as a liability due the Bank over a period of years without ever being reduced below $20,000.00?

42. Though there were times when you were not a member of the Committee, did you ever, during such periods, make inquiry of the members thereof or of executives of the Bank as to the condition of the liabilities either of Wichita Royalty Company, Marlborough Addition, J. T. Harrell, George W. Peckham, or Texas Investment Company? Answer what inquires were made and what advice was given and what discussion was had with respect to these pending liabilities due the Bank.

43. During 1923 and subsequent years did the Bank ordinarily suffer a $10,000.00 to $50,000.00 obligation due it to be renewed from quarter to quarter over a period of years without being reduced below $25,000.00 at any tone time and without demanding and receiving security and additional security from time to time and an exact ascertainment of the existing facts as to why such indebtedness was not liquidated?

44. Did you at any time during or after 1923, either as a member of said Committee or as a Director of said Bank, or as a stockholder thereof, ever have called to your attention the indebtedness reflected upon the Bank's books as being due by Wichita Royalty Company and George W. Peckham?

2345 45. If so, then answer in detail when and how many times the same was discussed by you and others, between whom such discussions were had, the substance of what was said, and what you recommended

with respect thereto, and how your recommendations were acted upon. Answer fully.

46. Was it the custom and practice of executives of the Bank to renew each sixty or ninety days a large indebtedness over a period of years without the Committee's knowledge?

47. Was such a loan so renewed by such an officer without the Committee's approving such renewals?

48. If the Committee did approve such renewals then would they go into the same facts as you have detailed above with respect to an original loan?

49. If they did not go into such facts, then into what facts did the members of the Committee go?

50. Was such Committee compensated for attending meetings of the Committee and, if so, how much per member per meeting?

51. Give the personnel of such Committee during 1923 and subsequent years, detailing what specific period of time each member of the Board of Directors served as a member of such Committee.

52. Describe in detail the financial conditions prevailing in 1930 and subsequent years over the United States and in Wichita Falls in particular.

53. When, during such period, did the value of the assets of the City National Bank of Wichita Falls begin to decrease and over what period of time did they continue to decrease?

54. When, during such period of time, did there begin a gradual withdrawal of deposits from said City National

Bank of Wichita Falls and over what period of time did such withdrawals continue?

55. Prior to the beginning of such period of financial depression, what were the total deposits of the City National Bank of Wichita Falls?

2346 56. To what extent were such deposits reduced during such period and when did such deposits reach their lowest amount?

57. When, during such period, did it become apparent to the officers and directors of said Bank that additional funds would be needed by said Bank in order for it to continue in business under the conditions then prevailing?

58. When, during such period, did you, as a director, consider that unless new funds were placed in the Bank, it would not be able long to withstand the continuance of such withdrawals?

59. What action did the officers and directors of the Bank take to meet such situation?

60. During such period of time and when such withdrawals were continuing, did representatives of the Banking Department call to the Bank's attention its need for additional funds to restore its impaired capital? Kindly attach as your answer hereto all reports of National Bank Examiners made of the City National Bank during 1930 and subsequent years. If you have not done so, explain why you have not.

61. Did the City National Bank of Wichita Falls, during 1930 and subsequent years, ever borrow in its own name as principal, from The First National Bank of Wichita Falls Texas any sum or sums of money?

62. If you have answered No. 61 yes, then attach hereto as your answer original note executed by said Bank to

obtain such loan. If you have not done so, then answer why you have not and give the amount of such loan, the date when made and what collateral and/or securities and/or guaranty and/or indemnity, if any, was given to The First National Bank to secure the payment of its loan to said City National Bank.

63. If you have answered that the City National Bank gave to The First National Bank collateral to secure a loan made to said City National Bank, then explain in detail whether such collateral is still with The First
2347 National Bank and if not, when and how and to whom and for what consideration did The First National Bank release and deliver such collateral, attaching as your answer hereto a copy of any pledge, agreement or contract of indemnity or guaranty that may have been made.

64. Did any of the officers, directors or stockholders of the City National Bank during 1930 and subsequent years, borrow from The First National Bank any sum or sums of money?

65. If you have answered yes to No. 64, then what was the purpose of such borrowers in obtaining such funds and what was done with the proceeds of such loans?

66. What collateral, if any, did such borrowers give to The First National Bank and if any collateral was given, what has become of such collateral? Explain fully.

67. Did not the proceeds of the loan so made with The First National Bank go into the City National Bank of Wichita Falls?

68. If you have answered yes to No. 67, then for what purpose, under what agreement, with what understanding

and upon what security, if any, were such funds so placed with the City National Bank? Explain fully, attaching as a part of your answer all memoranda or instruments in writing describing such transaction or evidencing the agreement and understanding of said bank and its said officers, directors and stockholders, or any matter pertaining to such transaction. If you have not so attached such memoranda, explain why you have failed to do so.

69. If you have answered that you, with other officers, directors or stockholders of City National Bank borrowed from The First National Bank any sum or sums of money to place in the City National Bank of Wichita Falls, then have those who so bororwed such money from The First National Bank paid to said Bank the money so borrowed?

2348 70. If you have answered No. 59, yes, then what payment did you make to The First National Bank? Attach hereto as your answer the check or checks whereby you paid your part thereof.

71. Was such loan, if any, so obtained by you the from The First National Bank ever paid in whole or in part by any other person, firm or corporation and, if so, by whom, when and in what manner was payment made?

72. Are you and the other makers of such original loan from The First National Bank still liable in whole or in part upon the loan so made to said individuals by The First National Bank of Wichita Falls and if not liable for any amount thereof, then when and how and to what extent and in what manner were such makers released of liability thereon? Give amounts, dates and full details and attach as a part of your answer any and all memoranda in writing of every character concerning such transaction.

73. Did you, with other officers or stockholders or directors of City National Bank of Wichita Falls, during

1930 and subsequent years, ever place with the City National Bank any sum or sums of money to strengthen its financial condition?

74. During 1930 and subsequent years did you, and within your knowledge, other officers, directors or stockholders of City National Bank ever place with said Bank, under any plan, contract or agreement other than the usual and customary deposit contract of a customer, any sum or sums of money? If so, please state who so advanced such sums, whence such funds were obtained, under what contract, understanding or agreement they were placed with said Bank, what promise for repayment was made by the Bank, what collateral, if any, was pledged as security therefor, and the facts relating to the placing of such moneys in said bank. Explain fully, attaching all memoranda relating thereto.

2349 75. Have you, and within your knowledge, other officers, directors and stockholders so advancing money to the City National Bank of Wichita Falls, been repaid in whole or in part for such sum or sums so advanced? Give dates and amounts and method of the bank's repayment of any sum or sums and the method and means used by said Bank with the consent of you and other officers and directors whereby such sums were repaid, whether assumes by it or placed to the credit of obligations due the bank by such persons so advancing the money or by the transfer of security or in any other way. Detail fully, attaching all memoranda evidencing the transaction or any part thereof.

76. Was not the City National Bank of Wichita Falls forbidden by federal Authority over National Banks to reopen its doors after March 1, 1933?

77 Kindly attach as your answer hereto all telegrams, letters and other communications sent by City National Bank of Wichita Falls to Federal Authority in charge

of the Reopening of Banks in March, 1933, as well as all such communications from such Authority. If you have not done so, kindly explain fully why you have not.

78. Did you, as a director, in March, 1933, when said City National Bank was closed by executive proclamation and before the end of the banking holiday, not know that City National Bank of Wichita Falls, Texas, would not under existing conditions again open its doors for business?

79. Is it or not true that when in March, 1933, all national banks were officially closed, no bank was permitted to reopen except upon federal authority after determination by governmental agencies that such bank was a solvent condition?

80. Is it or not true that City National Bank of Wichita Falls was never given federal authority to reopen for business subsequent to its closing March 4, 1933?

2350 81. Kindly detail and explain fully why it was that, as an interested party, you joined in the formation of a new "in" bank to succeed an old "of" bank and in the liquidation of such old and established banking institution in this vicinity?

82. Why was it that the old established bank was not continued as a going concern, but placed in voluntary liquidation in March, 1933?

83. Kindly detail all discussions had between you and other members of the Board of Directors of City National Bank of Wichita Falls as to what should be done toward the liquidation of the old bank and the organization of a new bank, identifying the persons with whom you talked, the substance of the conversations had between you and the conclusion reached as to the reasons why it was neces-

sary and/or advisable to liquidate the old bank and to organize a new bank.

84. To what extent and in what amount and because of what condition did any agency of Federal Government subscribe to a portion of the capital stock of City National Bank in Wichita Falls?

85. To what portion of the capital stock of City National Bank in Wichita Falls did you subscribe and what did you pay therefor? Attach as a part of your answer hereto the canceled check or checks given in such payment and if such was not paid in cash, then detail in what manner you paid for such stock and when you discharged your stock subscription liability to the new bank.

86. Detail fully as to the subscription to the capital stock of City National Bank in Wichita Falls, detailing the amount of the capital stock authorized to be issued under its charter, those who subscribed thereto and in what amounts, how much was paid therefor by the several subscribers, how such payments were made and whether or not such subscription obligations have been fully discharged, and, if not to what extent is such subscription liability still due to said bank?

2351 87. At or about the time it was determined to place the old bank in liquidation and form a new bank, was there or not any agreement or understanding between officers, directors and stockholders of the old bank with respect thereto? Detail in full each and every such agreement or understanding and attach hereto as a part of your answer such memoranda thereof as may have been reduced to writing.

88. Was each and every stockholder of the City National Bank of Wichita Falls given an equal opportunity with all others to join in the organization of City National Bank in Wichita Falls?

89. Was each and every stockholder of City National Bank of Wichita Falls fully and completely advised of each and every thing that was contemplated to be done in the liquidation of the old and the organization of the new bank?

90. Attach as your answer hereto copies of each communication to stockholders of City National Bank of Wichita Falls evidencing the facts given in answer to the two immediately preceding questions.

The above and foregoing interrogatories will be answered by the impleaded defendant J. J. Perkins, whose residence is Wichita Falls, Texas, and one of whose solicitors of record is Leslie Humphrey, who likewise resides in Wichita Falls, Texas, a copy hereof being filed with the Clerk for use on demand.

Respectfully Submitted,
KILGORE & ROGERS,
By GUY ROGERS,
Attorneys for Wichita Royalty Company.

OBJECTIONS OF THE CITY NATIONAL BANK OF WICHITA FALLS TO SAID INTERROGATORIES.

Filed in U. S. Dist. Court Sept. 7, 1936.

2352 (Title Omitted.)

The impleaded defendants, J. T. Harrell, J. J. Perkins, and Leslie Humphrey, together with the other parties made defendants in the cross-action of the Wichita Royalty Company, come now, pursuant to Rule 58 for the practice of Courts in Equity in the United States, and object to the interrogatories propounded by the Wichita Royalty Company and E. E. Scannell to J. T. Harrell,

J. J. Perkins, and Leslie Humphrey, and to each and all of such interrogatories, for the following reasons:

(A) That it is apparent from said interrogatories that the same constitute a "fishing expedition" to discover from a mass of immaterial testimony evidence which might become material;

(B) That such interrogatories in effect require the submission of said defendants' evidence in advance of the trial;

(C) That it is an attempt to pry into the adversary's case;

(D) That it is an attempt to compel the production of memorandum from which the name or names of some witness or witnesses may be secured whose testimony might be material;

(E) That the evidence called for is not the disclosure of ultimate facts.

Wherefore, the defendants and the parties to whom said interrogatories are propounded object to each and all of said interrogatories, and pray that their objections to same be sustained.

These defendants, including J. J. Perkins, object to the interrogatories propounded to the said J. J. Perkins, as follows:

2353 They object to interrogatories Nos. 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 43, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, and 90 for the reason that said interrogatories inquire into confidential matters which are

not material to the issues in this cause and is not an attempt to discover the ultimate facts, as contemplated by Rule 58, but is in the nature of a "fishing expedition" and to gather evidence which might or might not be material.

These defendants further object to said interrogatories wherein they ask for a production of the minutes of the discount committee, for the reason that such minutes are confidential in their nature and are not a material inquiry to this cause of action.

These defendants further object to the interrogatories wherein they call for reports of the National Bank Examiner, for the reason that said examinations are matters confidential in their nature; that the reports are made by the National Bank Examiner and not by an officer or agent of the bank, and can serve no useful purpose and are not material and are too remote.

These defendants further object to such interrogatories propounded to J. J. Perkins wherein they call for communications between the bank, said witness, and agents of the United States Government, for the reason that the same are confidential in their nature and are not material.

Said defendants, including the defendant Leslie Humphrey, further object to the following interrogatories propounded to the said party, Leslie Humphrey, to wit,
235 interrogatories Nos. 5, 6, 7, 8, 9, 10, 15, 16, 17, and 18, for the reasons heretofore stated and for the further reasons that said interrogatories call for conclusions and inquire into confidential matters, especially interrogatories Nos. 7 and 15, as to the compensation paid to Leslie Humphrey and Tarlton Morrow, and do not call for ultimate facts and are not material inquiries into the cause of action presented by the said Wichita Royalty Company, and is an attempt to

cause the defendants to produce their evidence in advance of the trial.

These defendants, including the defendant J. T. Harrell, object to the following specific interrogatories propounded to him, namely, interrogatory No. 8, because it does not appear that the inquiry is material or calls for any ultimate facts and requires these defendants to produce their testimony in advance of the trial, and that said information can more readily be obtained by the taking of testimony before the Special Examiner heretofore appointed by the Court. In this connection, these defendants say that J. T. Harrell is an executive officer of the bank and the information called for in said interrogatory No. 8 will necessarily have to be supplied by some bookkeeper or accountant in the bank, and that these defendants are willing to supply from such source such information before the Special Examiner.

The same objection is made to interrogatory No. 9. It is apparent that the book entries of the bank are inquired about in respect to said interrogatories Nos. 8 and 9, and that these defendants are willing to produce the books and records before the Special Examiner in respect to such inquiries as are material.

These defendants object to interrogatory No. 10 for the same reason.

2355 These defendants object to interrogatory No. 11, for the reason that it calls for the attaching of the original records of the bank and, in this connection, these defendants would respectfully show that the Wichita Royalty Company's attorney has been furnished with photostatic copies of such instruments as called for in interrogatory No. 11; that such information can be more readily ascertained from an inquiry into the records of the bank from one who has kept or is familiar with the records, and not from an executive officer.

These defendants object to interrogatory No. 13, for the reason that it calls for a mass of information, some of which might not be material, and it is apparent that the same is a "fishing expedition."

Likewise, these defendants object to interrogatory No. 14 propounded to J. T. Harrell, in that it calls for the exhibition of all deposit slips of G. W. Peckham and all accounts on which G W. Peckham had authority to draw checks; that the same necessarily calls for much immaterial matter.

These defendants object for the same reason to interrogatory No. 16 propounded to J. T. Harrell.

These defendants object to interrogatory No. 17 for the same reason.

These defendants object to interrogatories Nos. 18, 19, and 20 for the same reasons and, in this connection, these defendants, including the defendant J. T. Harrell, say that they are willing to produce and furnish to the examiner appointed, or to the Court, such instruments as are material to the inquiry into this cause and as to the cause of action presented by the plaintiff, Wichita Royalty Company.

2356 These defendants, including the defendant J. T. Harrell, object to interrogatory No. 21, which calls for the furnishing of all reports made by the National Bank Examiner of the examination of the City National Bank during 1923 and subsequent years, for the reason that said reports are confidential communications from the Department of Banking and said bank; that the National Bank Examiner is not an officer or agent of the bank and that such reports are too remote, and are not a material inquiry.

For the same reason, these defendants, including the defendant J. T. Harrell, object to interrogatories Nos. 22, 23, and 24.

These defendants object to interrogatory No. 25, for the reason that it does not call for a discovery, as contemplated by Rule 58 in Equity. In this connection, however, these defendants would respectfully show to the Court that they are willing to fully disclose to the Examiner the books and records of the City National Bank of Wichita Falls, Texas, in relation to the account of the Wichita Royalty Company, G. W. Peckham, and the Marlborough Addition, in so far as they are material to any inquiry in this case or to the specific items sued upon.

Wherefore, these defendants pray that these objections be set down for hearing and that upon a hearing the same be sustained.

T. R. BOONE,
Attorney for J. T. Harrell.
WEEKS & MORROW,
BULLINGTON, HUMPHREY & KING,
Attorneys for J. J. Perkins, Leslie Humphrey, et al.

ORDER OF THE COURT UPON THE HEARING OF SAID OBJECTIONS.

Filed and Entered Sept. 12, 1936.

2357 (Title Omitted.)

On this the 12th day of September A. D. 1936, came on to be considered the exceptions to certain interrogatories propounded by the Wichita Royalty Company and E. E. Scannell to J. T. Harrell, J. J. Perkins and Leslie

Humphrey, the parties being before the Court, and the Court, after hearing said exceptions, sustains the exceptions as to the following interrogatories propounded to the witness, J. T. Harrell:

Interrogatories Nos. 11, 13, 15, 16, 17, 21, 22 and 25, and the Court sustains the exceptions to the following interrogatories propounded to the witness Leslie Humphrey:

Interrogatories Nos. 5, 6, 16, 17, and 18, and the Court sustains the exceptions to the following interrogatories propounded to the witness J. J. Perkins:

Interrogatories Nos. 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 43, 46, 47, 48, 49, 51, 52, 57, 60, 63, 64, 65, 66, 67, 68, 69, 72, 74, 75, 77, 79, 83, 86, and 87.

It Is Further Ordered that the time for the answering of said interrogatories by J. T. Harrell is extended until October 10, A. D. 1936.

This order is wtihout prejudice to the rights of the Wichita Royalty Company and E. E. Scannell to require the production and/or proof of such evidence inquired about by other methods than by discovery under Rule 58.

WM. H. ATWELL,
United States District Judge.

ANSWERS OF J. J. PERKINS TO SAID INTERROGATORIES.

Filed in U. S. Dist. Court Sept. 25, 1936.

2358 (Title Omitted.)

Answers of J. J. Perkins to the interrogatories propounded in Equity No. 358 by Wichita Royalty Company and E. E. Scannell.

J. J. Perkins, being duly sworn, makes the following answers to the interrogatories propounded to him by Wichita Royalty Company and E. E. Scannell:

Answer to Interrogatory No. 1:
I am.

Answer to Interrogatory No. 2:
For fifteen years or more.

Answer to Interrogatory No. 3:
Reasonably so.

Answer to Interrogatory No. 4:
Yes.

Answer to Interrogatory No. 5:
The Committee was composed of the Active Officers of the Bank and usually with the assistance of one or two Directors other than the Active Officers.

Answer to Interrogatory No. 6:
The personnel of the Committee remained the same except as to the outside Directors who changed from time to time without any definite period of service to suit the convenience of the outside Directors so serving.

Answer to Interrogatory No. 7:
My understanding is they held a meeting every morning except Saturday morning and Sunday morning and holidays.

2359 Answer to Interrogatory No. 8:
The Committee would meet to pass upon the renewal of such loans as were coming up for renewal, these usually being submitted ten days in advance of their due date. The Committee would also consider such applications as were submitted for new loans and would also consider any information which might be

submitted or was available affecting any loans of the bank or any other business pertaining to the bank.

Answer to Interrogatory No. 9:
No.

Answer to Interrogatory No. 10:
The Board of Directors left to J. T. Harrell, who was either President or Active Vice-President, such discretion as was usual and customary in an official in his position.

Answer to Interrogatory No. 11:
Nos. 11 to 29, Inclusive, not answered because exceptions were sustained to such interrogatories.

Answer to Interrogatory No. 30:
Yes. I knew that J. T. Harrell, J. A. Kemp and G. W. Peckham were all interested in the Marlborough Addition and this information was common knowledge in business circles generally in Wichita Falls.

Interrogatories Nos. 31, 32 & 33 Omitted.

Answers to Interrogatories Nos. 34 & 35:
I could not tell you what investigation was made with reference to the authority of G. W. Peckham to borrow money in the name of the Wichita Royalty Company. It was my understanding that he was sole trustee of the Wichita Royalty Company, and as such trustee, was supposed or reputed to have had the widest possible authority in connection with the affairs of the Wichita Royalty Company, and he was the only representative of said Wichita Royalty Company having such authority.

2360 Answers to Interrogatories Nos. 36 & 37:
I do not know whether the Committee has ever read the Declaration of Trust, but I know I have never read the Declaration of Trust of Wichita Royalty

Company; but it was common knowledge in business circles in Wichita Falls that Mr. Peckham was the Sole Trustee of Wichita Royalty Company. I have never at any time heard of his authority in connection with the Wichita Royalty Company being questioned until you questioned it and neither have I heard of the authority of any other sole trustee of any other royalty company operating in and around Wichita Falls as having been questioned. I supposed Mr. Peckham's authority was almost unlimited as to the Wichita Royalty Company. I do not have any knowledge of whether any legal advice was ever obtained with reference to Peckham's authority to act for Wichita Royalty Company.

Answers to Interrogatories Nos. 38 & 39:

Since the matter about which you inquire with reference to the Wichita Royalty Company and G. W. Peckham occurred several years ago, I have no recollection of any Committee meetings. I do recollect, however, at several of our Directors' meetings that these various loans, and particularly the Wichita Royalty Company, G. W. Peckham and Marlborough Addition, were discussed, and while I have no independent recollection at this time of the detailed information disclosed at that time, I do recall that it was our judgment that the loans were good loans.

Answer to Interrogatory No. 40:

I cannot recall what was said in respect to the Wichita Royalty Company note since the transactions inquired about were several years ago.

2361 Answer to Interrogatory No. 41:

I do not recall any specific conversations in respect to the G. W. Peckham loan. Peckham's loans were considered good.

Answer to Interrogatory No. 42:

I do not now remember the details of any discussions had with reference to these notes, but I do know in a

general way that these notes, about which you make inquiry, were discussed at various Directors' meetings.

Interrogatory No. 43 Omitted.

Answer to Interrogatory No. 44:

I knew in a general way about the indebtedness of the Wichita Royalty Company and G. W. Peckham to the City National Bank.

Answer to Interrogatory No. 45:

I cannot answer this because you are asking about something that occurred some 8 or 10 years ago and I do not remember any of the details of the discussion at this time.

Interrogatories Nos. 46, 47, 48 & 49 Omitted.

Answer to Interrogatory No. 50:

It is my understanding that the members of the Discount Committee, other than the Active Officers, were paid $5.00 per meeting at a portion of said period under inquiry.

Interrogatories Nos. 51 & 52 Omitted.

Answers to Interrogatories Nos. 53 & 54:

Mr. E. A. Deaton, who is Liquidating Agent for the Bank, has the records giving this information, and he will be willing to furnish the same to you.

I do not have a record of the deposits of City
2362 National Bank of Wichita Falls but it is my understanding that the deposits not only in the City National Bank but in nearly all the other banks over the country began to decrease during the early part of 1930 and continued to decrease until March 1933, when all the banks were closed by Federal Authority; the same would, of course, apply to the assets as well as to the deposits.

Answers to Interrogatories Nos. 55 & 56:

Mr. E. A. Deaton can furnish you this information and I am quite sure he will do so upon request. I do not have this information.

Interrogatory No. 57 Omitted.

Answers to Interrogatories Nos. 58 & 59:

During the summer of 1931 the deposits of the City National Bank were shrinking quite rapidly and by fall it was apparent that it would be necessary to obtain a large amount of funds, perhaps a million dollars, in order to safely meet the heavy withdrawals and keep the bank in liquid position.

An examination of the loans of the bank disclosed that nearly all of them had been made to local people and to force their collection would have meant bankruptcy to a large number of the makers of these obligations and would have greatly disturbed the feeling of unrest not only in Wichita Falls but in this entire section of the country.

The Board of Directors discussed this situation and decided to borrow the necessary funds by pledging the notes of the bank as collateral. In furtherance of this the Board of Directors signed a personal guarantee to the Federal Reserve Bank in Dallas for the sum of $750,000.00 to guarantee the repayment of any money loaned to the City National Bank of Wichita
2363 Falls by the Federal Reserve Bank. Immediately after the signing of this guarantee the City National Bank borrowed from the Federal Reserve Bank of Dallas $460,000.00 and gave as collateral some of the notes receivable of the City National Bank. The personal guarantee of the Directors also served as an additional security on this loan.

At about the same time the City National Bank borrowed from the First National Bank of Wichita Falls $150,000.00 and the City National Bank executed its note for that amount and which note was indorsed by

the Directors of the City National Bank, including myself.

We also borrowed from the First National Bank in Dallas $100,000.00 and this note was also indorsed by the City National Bank Directors.

At a later date there had been some payments made on this loan and perhaps one or two renewals and some additional funds were borrowed from the First National Bank of Wichita Falls which, as I recall, were handled in the same way.

I do not have the details of these loans, nor the time at which they were paid, but I do know they have all long since been paid and were paid by the City National Bank. None of the Indorsers upon said obligations either to the First National Bank of Wichita Falls, the First National Bank in Dallas or to the Federal Reserve Bank ever had to pay anything thereon but all of the obligations were satisfied and paid by the City National Bank.

Interrogatory No. 60 Omitted.

Answer to Interrogatory No. 61:

Yes.

2364 Answer to Interrogatory No. 62:

See Answers to Nos. 58 & 59.

I do not have the canceled note about which you make inquiry and have never had it.

Interrogatories Nos. 63, 64, 65, 66, 67, 68 & 69 Omitted.

Answers to Interrogatories Nos. 70 & 71:

The Answers to Interrogatories Nos. 70 & 71 are evidently intended to be predicated upon the answer to Interrogatory No. 69; however, I did not make any payment to the First National Bank, or to any other person, in payment of indebtedness of the City National Bank. I do not have any check, or checks, whereby I paid any part thereof, for the reason that I paid no part of such indebtedness. The loans which were obtained from the

First National Bank have been fully paid by or through the City National Bank of Wichita Falls, or from bills receivable assigned to the individuals who secured said loans, but I did not personally pay any part of same.

Interrogatory No. 72 Omitted.

Answer to Interrogatory No. 73:
No.

Interrogatories Nos. 74 & 75 Omitted.

Answer to Interrogatory No. 76:
The National Banks over the entire country were closed by Federal Authority about March 1, 1933. The City National Bank of Wichita Falls never asked for authority to re-open and it is my understanding that all the banks had to ask for this authority in order to re-open.

Interrogatory No. 77 Omitted.

2365 Answer to Interrogatory No. 78:
I know that the City National Bank of Wichita Falls did not again open its doors for business because the City National Bank in Wichita Falls had been organized before the end of the banking holiday and the new bank purchased certain of the assets of the old bank and assumed specific liabilities, as shown by the ledger of the old bank, all of which is fully set out in the contract as made between the old bank and the new bank.

Interrogatory No. 79 Omitted.

Answer to Interrogatory No. 80:
Yes.

Answer to Interrogatory No. 81:
The owners of the stock of City National Bank were widely scattered and after going over the list of the

stockholders there were many of the stockholders who could not pay an assessment on the stock of the old bank and some who probably would not without litigation, and after a full discussion, it was deemed best to organize a new bank to be known as the City National Bank in Wichita Falls. In using this name the bank could still have the advantage of the prestige of the old bank. The Reconstruction Finance Corporation purchased $400,000.00 preferred stock in the new institution and it was immediately given authority to begin business, and which it did at the end of the banking holiday.

Answer to Interrogatory No. 82:

Because there was no occasion to continue the old bank when the new one had been organized in the name of City National Bank in Wichita Falls.

2366 Interrogatory No. 83 Omitted.

Answer to Interrogatory No. 84:

The Reconstruction Finance Corporation purchased $400,000.00 Preferred Stock in City National Bank in Wichita Falls.

Answer to Interrogatory No. 85:

I subscribed for $35,000.00 of the Capital Stock of the City National Bank in Wichita Falls and I paid for it. I did not give any check for this money. My associate, Mr. L. H. Cullum, subscribed for $15,000.00 of the Capital Stock of the new Bank, which, together with my subscription of $35,000.00, amounted to $50,000.00 and we borrowed from the First National Bank in Dallas this $50,000.00 and gave them a Deed of Trust upon some of our oil properties. This money was turned over direct to the new bank by the First National Bank in Dallas, which sum of $50,000.00 was paid by us to the First National Bank in Dallas over a period of several months.

Interrogatories Nos. 86 & 87 Omitted.

Answer to Interrogatory No. 88:
Yes.

Answer to Interrogatory No. 89:
Yes. Each and every stockholder of the City National Bank of Wichita Falls were advised of the stockholders meeting of said bank at which time all the information affecting the bank was available, and if any of them were not fully advised, it was because they did not attend the meeting.

Answer to Interrogatory No. 90:
I do not have the copies of the communication sent to the stockholders generally of the City National Bank of Wichita Falls. I am sure if you do not already have this information, you can obtain copies of the various communications from the Liquidating Agent of the City National Bank of Wichita Falls.

2367

J. J. PERKINS.

The State of Texas,
County of Wichita.

I, Ruby Kessler, a Notary Public in and for Wichita County, Texas, do hereby certify that the answers to the questions were made before me by J. J. Perkins, after being duly sworn, and were by me reduced to writing, and in the presence of the deponent read over to him and by him subscribed in my presence after being reduced to writing.

Given Under My Hand and Seal of Office this 25 day of September A. D. 1936.

RUBY KESSLER,
(Seal) Notary Public, Wichita County, Texas.

ANSWER OF THE CITY NATIONAL BANK OF WICHITA FALLS, ET AL, TO THE MOTION TO DISMISS.

Filed in U. S. Dist. Court, December 3, 1936.

2368 (Title Omitted.)

The City National Bank of Wichita Falls, Texas, a corporation; the City National Bank in Wichita Falls, Texas, a corporation; J. T. Harrell, individually and as trustee of the City National Bank of Wichita Falls, Texas; the Texas Investment Company, a corporation; E. A. Deaton, Liquidating Agent of the City National Bank of Wichita Falls, Texas; L. H. Cullum, Leslie Humphrey, Tarlton Morrow, Jack Jeffus, Oral Jones, Frank Kell, Joe Kell, J. J. Perkins, C. W. Snider and F. P. Timberlake, interpleaded defendants in the cross-action of the Wichita Royalty Company, in reply and answer to the motion to amend filed by the Wichita Royalty Company and E. E. Scannell, plead as follows:

1. In answer to paragraph number 1 of said motion, and the various subdivisions thereof, these interpleaded defendants respectfully say:

That the cross action and interpleader of the Wichita Royalty Company filed herein was a suit filed on the 18th of June, 1936, which suit for the first time sought a recovery upon the cause of action therein presented against these interpleaded defendants; that said suit was returnable on July 13, 1936, and that said interpleaded defendants were required to plead and answer on the 14th of July, 1936, said suit being filed in the 30th District Court of Wichita County, Texas, and that these interpleaded defendants, together with all other necessary defendants in said cross action and interpleader, prior to the date that they were re-

2369 quired to answer and prior to July 14, A. D. 1936, timely filed their petition and bond for

removal to this Honorable Court, which petition and bond was in proper form, and the bond was duly approved and said cause was duly removed from said State Court to this Honorable Court, all of which is apparent from the record herein; that said cross action and interpleader is a suit brought to declare void a transfer of the assets of the City National Bank of Wichita Falls to the City National Bank in Wichita Falls under Title 12, Section 91, United States Code Annotated, and is a suit to wind up the affairs of a national bank in liquidation and to fix a liability against the directors of said respective banks by virtue of a transfer of the assets of a national bank while allegedly insolvent, and is therefore a suit arising under the Constitution and laws of the United States and is a suit in equity, and that this Honorable Court therefore has jurisdiction to hear and determine said cause and to grant all ultimate and incidental relief prayed for by the respective parties.

That the separate and incidental issues presented is no bar to the jurisdiction of this Honorable Court, as it has complete power to fully adjudicate and determine all such issues.

2. In answer to paragraph number 2 of said motion to remand, these interpleaded defendants say that said cause of action presented by the Wichita Royalty Company in its cross action and interpleader is a suit in equity, seeking equitable relief as against the interpleaded defendants, predicated and bottomed upon a right allegedly given said Wichita Royalty Company under the laws of the United States, and for the winding up of a national bank, and therefore this Honorable Court has actual and potention jurisdiction to
2370 hear and determine all of the issues and controversies.

3. Replying to paragraph number 3 in said motion, these interpleaded defendants say that none of them,

save and except the City National Bank of Wichita Falls and J. T. Harrell, were defendants in the original cross action filed by the Wichita Royalty Company; and these interpleaded defendants (except Harrell and the City National Bank of Wichita Falls) were first made parties to the cross action and interpleader of the Wichita Royalty Company on June 18, 1936; that the original suit filed by the Wichita Royalty Company against the City National Bank of Wichita Falls and J. T. Harrell was a simple action for debt and presented no Federal question, and no relief was prayed for under the Constitution and laws of the United States, but this suit is a suit squarely predicated upon and arising under the Constitution and laws of the United States, all of which is apparent from said cross action and interpleader, and that these interpleaded defendants all timely filed in the manner required by law their petition and bond for removal and said cause was duly removed under the statutes of the United States to this Honorable Court, and at no time did any of these interpleaded defendants invoke the jurisdiction of the State Court to hear and determine the matters raised in this cross action and interpleader, and respectfully allege that they are not estopped to remove this cause to this Honorable Court.

4. In reply to paragraph number 4 in said motion to remand, these interpleaded defendants respectfully allege that the cause of action asserted by the cross complainants, as shown by their third amended original answer, cross action, and interpleader filed herein on July 13, 1936, is a suit arising under the Constitution
2371 and laws of the United States and to wind up the affairs of a national bank, and involves a controversy and dispute properly within the jurisdiction of this Honorable Court.

5. In reply to paragraph number 5 in the motion to remand, these interpleaded defendants say that the cause of action as pleaded is governed by the statutes

of the United States and the laws governing the winding up of national banks; that it is a case growing out of the legislation of Congress predicated, and bottomed upon a right given the cross-complainant Wichita Royalty Company under the laws of the United States; that the laws of the United States form an ingredient of the original cause of action and it involves the construction of the laws relating to the winding up of national banks and of Section 91, Title 12, of the United States Code Annotated, and is therefore a suit of which this Court has jurisdiction on removal, as well as original jurisdiction.

6. In reply to paragraph number 6 in the motion to remand, these interpleaded defendants say that the suit is predicated upon Section 91, Title 12, of the United States Code Annotated, declaring preferential transfers of national banking associations, while insolvent, invalid and also to wind up the affairs of a national banking association now in liquidation; that the City National Bank of Wichita Falls is a national banking association in liquidation pursuant to the laws and statutes of the United States of America relating to the winding up of affairs of national banking associations; that E. A. Deaton is the Liquidating Agent duly appointed as such under the laws of the United States; and acting as such pursuant to the laws of the United States and under
2372 the direction of the Comptroller of the Currency, and is a party to this suit, and that said cause, involving as it does the application and construction of the laws of the United States, is removable to this Honorable Court.

7. In reply to paragraph number 7 of the motion to remand, these interpleaded defendants say that they (except Harrell and the City National Bank of Wichita Falls) were first made parties defendant to the cross-complainants' suit on June 18, 1936, and the cause became removable only after the filing of said third

amended original answer, cross action, and interpleader, and that this cause was timely removed by the interpleaded defendants and that the original action in which the City National Bank of Wichita Falls and J. T. Harrell were made interpleaded defendants presented no Federal question, but was a simple action for debt.

8. In answer to paragraph number 8 of the motion to remand, these interpleaded defendants say that the petition and bond prayed for a removal of the entire cause and suit to this Honorable Court, all of which is apparent from the petitions and bonds filed herein, and that, upon the filing of said respective petitions and bonds for removal and approval of said bonds, the entire cause was removed to this Court.

9. Answering paragraph number 10 of the motion to remand, these interpleaded defendants say that this cause of action is one not only to wind up the affairs of a national bank but also a suit arising under the laws and Constitution of the United States, in that it requires the construction and application:

2373 (a) Of the Laws of the United States relative to the winding up of a national banking association in liquidation;

(b) A statute of the United States determining whether or not liability against the new bank (the City National Bank of Wichita Falls) and its directors is created by virtue of a transfer of the assets of the City National Bank of Wichita Falls while it is or was allegedly insolvent.

both of which grounds give this Court jurisdiction.

10. That neither The Texas Company, the Continental Oil Company, nor the Humble Oil & Refining Company were necessary parties to this cause; that they occupy the position of nominal parties, being stakeholders only.

not interested in the final outcome of said suit and were not necessary parties to the removal, and the guardian of William and George Peckham, minors, had inherent authority under the order of appointment to petition for a removal; that this is also true with reference to the administrator of the estate of G. W. Peckham, deceased; that neither Charles L. Black, Guy Rogers, individually and as trustee, E. E. Scannell, individually and as trustee, nor the Wichita Royalty Company were defendants in the cross action and interpleader of the Wichita Royalty Company and therefore were not required to join in the petition for removal.

11. Answering paragraph number 12, these interpleaded defendants say that the suit is one arising under the Constitution and laws of the United States and is removable regardless of the citizenship of the parties, and that the guardian of the minors had authority as such to petition for removal; that a preliminary order of the Probate Court, granting the guardian or administrator the right or power to petition for removal, is not required.

12. Answering paragraph number 14 of the motion to remand, these interpleaded defendants deny that the Texas Investment Company is a dissolved cor-
2374 poration and say that it is a corporation duly created by the laws of Texas, in good standing, and its action in petitioning for removal was made pursuant to the authority of the officers and directors of said corporation.

13. These interpleaded defendants, in answer to paragraph number 15 of the motion to remand, deny that the cause of action asserted by the City National Bank of Wichita Falls is wanting in equity.

14. These interpleaded defendants further respectfully say that the cross-complainants, Wichita Royalty Com-

pany and E. E. Scannell, have waived any right to move for a remand of this cause and are estopped to do so, for the reason that they have appeared in this cause after it was removed, prior to making any motion to remand, petitioned this Honorable Court for relief, filed interrogatories praying for a discovery under Equity Rule 58, and, pursuant to the orders of this Court, required several of the interpleaded defendants, namely, J. J. Perkins, J. T. Harrell, and Leslie Humphrey, to appear and make answer to interrogatories propounded under Equity Rule 58, and, having invoked the jurisdiction and aid of this Court to obtain a discovery and having obtained evidence pursuant thereto, said cross-complainants are estopped to deny the jurisdiction of this Court.

Wherefore, these interpleaded defendants respectfully pray that the motion to remand be denied.

T. R. BOONE,
Attorney for the Interpleaded Defendant J. T. Harrell.
WEEKS & MORROW
BULLINGTON, HUMPHREY & KING,
Attorneys for the Interpleaded Defendants, except J. T. Harrell.

2375 The State of Texas,
County of Wichita.

J. T. Harrell, one of the interpleaded defendants, being duly sworn on oath, says that he has read the above and foregoing answer to the motion to remand and that the facts therein stated are true.

J. T. HARRELL.

Sworn to and Subscribed Before Me, this 1st day of December A. D. 1936.

MRS. GERTRUDE TURNER.
(Seal) Notary Public, Wichita County, Texas.

The State of Texas,
County of Wichita.

Leslie Humphrey, for himself and as attorney for the other interpleaded defendants (except J. T. Harrell), being duly sworn on oath, says that he has read the above and foregoing answer to the motion to remand of the Wichita Royalty Company and E. E. Scannell and that the facts therein stated are true.

LESLIE HUMPHREY.

Sworn to and Subscribed Before Me, this 1st day of December A. D. 1936.

MRS. GERTRUDE TURNER,
(Seal) Notary Public, Wichita County, Texas.

PETITION FOR CROSS APPEAL ON BEHALF OF THE CITY NATIONAL BANK OF WICHITA FALLS, TEXAS, A NATIONAL BANKING ASSOCIATION, AND E. A. DEATON, ITS LIQUIDATING AGENT COMPLAINANTS, AND THE CITY NATIONAL BANK IN WICHITA FALLS, A NATIONAL BANKING ASSOCIATION, INTERPLEADED DEFENDANT.

Filed in U. S. Dist. Court July 3, 1937.

2376 (Title Omitted.)

To the Honorable Wm. H. Atwell, Judge of the United States District Court for the Northern District of Texas.

Your petitioners, the City National Bank of Wichita Falls, Texas, a national banking association, now in liquidation, and E. A. Deaton, its Liquidating Agent, complainants in the above cause, together with the City National Bank in Wichita Falls, a national banking as-

sociation, interpleaded defendant in said cause, respectfully show that the Wichita Royalty Company and E. E. Scannell, defendants in the above cause, have been allowed by this Honorable Court an appeal from the judgment and decree made herein on the 9th of April A. D. 1937, and your petitioners also consider themselves aggrieved by said judgment and decree in so far as it denies a recovery on behalf of the complainants against the Wichita Royalty Company and its Trustee, E. E. Scannell, defendants, as prayed for in its repleaded bill of complaint, and in the cross-complaint of the interpleaded defendant, City National Bank in Wichita Falls.

Therefore, your petitioners pray for the allowance of a cross-appeal from said judgment and decree, so denying such recovery, to the Circuit Court of Appeals of the United States for the Fifth Circuit, for the reasons stated in the assignments of error filed herewith.

Dated this the 29th day of June A. D. 1937.

TARLTON MORROW,
LESLIE HUMPHREY,
Attorneys for the City National Bank of Wichita Falls and E. A. Deaton, Liquidating Agent, Complainants, together with City National Bank in Wichita Falls, Interpleaded Defendant.

ORDER OF THE COURT ALLOWING THE CROSS-APPEAL.

Filed and Entered July 3, 1937.

2377 (Title Omitted.)

The cross-appeal of the City National Bank of Wichita Falls, Texas, and E. A. Deaton, Liquidating Agent, com-

plainants, and City National Bank in Wichita Falls, a national banking association, interpleaded defendant, is hereby allowed, this 3 day of July A. D. 1937.

It Is Further Ordered that said cross-appeal may be considered upon the record filed by the defendant Wichita Royalty Company, included in which shall be the petition for cross-appeal, its allowance, and the assignments of error accompanying same.

WM. H. ATWELL,
United States District Judge.

ASSIGNMENTS OF ERROR FILED BY THE CITY NATIONAL BANK OF WICHITA FALLS AND E. A. DEATON, ITS LIQUIDATING AGENT, COMPLAINANTS, TOGETHER WITH THE CITY NATIONAL BANK IN WICHITA FALLS, INTERPLEADED DEFENDANT.

Filed in U. S. Dist. Court July 3, 1937.

2378 (Title Omitted.)

First Assignment of Error.

The Court erred in failing to render judgment in favor of the complainant, City National Bank of Wichita Falls, and against the Wichita Royalty Company and E. E. Scannell, defendants, upon the note of $22,000.00 signed by the Wichita Royalty Company, as prayed for by the complainant in its repleaded bill of complaint, and for a foreclosure of an equitable lien on the assets of the Wichita Royalty Company, as said note of $22,000.00 was an undisputed unpaid balance due the complainant bank for money borrowed by the Wichita Royalty Company, a trust, secured by an equitable lien on all of the assets

of said trust, and the undisputed evidence, as well as the facts found by the Trial Court, clearly establish the complainant bank's right to recover thereon in accordance with the prayer in the complainant's repleaded bill of complaint.

Second Assignment of Error.

The Court having found that only the sum of $4,357.11 paid to the complainant bank by the Trustee
2379 Peckham, on his personal debts, was traceable to funds of the Wichita Royalty Company which had been deposited by the Trustee, Peckham, to his personal account, therefore the Court erred in failing to render judgment in favor of the complainant bank and against the Wichita Royalty Company and its Trustee for the amount of $22,000.00, interest and attorney's fees, less such credit of $4,357.11, and for the establishment and foreclosure of an equitable lien for such sum as was due on the assets of the Wichita Royalty Company, a trust estate, the trust agreement, as well as the conduct of the successor trustee, having created an equitable lien on the assets of the Wichita Royalty Company for the payment of its valid debts.

Third Assignment of Error.

The Court erred in failing to render judgment in favor of the complainant upon the note of the Texas Investment Company, by virtue of the liability of the Wichita Royalty Company as indorser thereof, as prayed for in complainant's repleaded bill of complaint.

Wherefore, complainants, City National Bank of Wichita Falls and E. A. Deaton, its Liquidating Agent, together with the City National Bank in Wichita Falls, interpleaded defendants, respectfully pray that these assignments be sustained and that part of the decree deny-

ing the complainant a recovery be reversed and that the remainder of the decree in all things be affirmed.

TARLTON MORROW,
LESLIE HUMPHREY,
Attorneys for City National Bank of Wichita Falls and E. A. Deaton, Liquidating Agent, Complainants, and City National Bank in Wichita Falls, Interpleaded Defendant.

2382 PRAECIPE.

Filed in U. S. Dist. Court July 14, 1937.

(Title Omitted.)

To the Clerk of the United States District Court, for the Northern District of Texas:

Now Comes the City National Bank of Wichita Falls and E. A. Deaton, its Liquidating Agent, together with the City National Bank in Wichita Falls, Appellees and Cross-appellants herein, and, having been furnished with a copy of the Praecipe of the Appellant, Wichita Royalty Company, request the following additional portions of the record to be incorporated in the transcript on appeal:

1. Agreement to shorten the record.

2. Second Amended Original Answer, Cross-action, and Interpleader of the Wichita Royalty Company, filed April 27, 1931. (Pages 59 to 104, Transcript from the State Court)

3. Judgment of the District Court of Wichita County, Texas.

4. Citation and Summons issued upon the Third Amended Original Answer, Cross-action, and Interpleader of the Wichita Royalty Company, together with the sheriff's return thereon, omitting copy of the cross-action and interpleader. (Page 331, Transcript from the District Court)

5. Notice to serve non-resident defendants Hazel D. Peckham et al and return thereon. (Pages 392 et seq. Transcript from the State Court)

6. Interrogatories propounded to J. J. Perkins by the Wichita Royalty Company after removal Under Rule 58 In Equity.

7. Objections of the City National Bank of Wichita Falls to said interrogatories.

8. Order of the Court upon the hearing on said objections.

9. Answers of J. J. Perkins to said Interrogatories.

2383 10. Answer of the City National Bank of Wichita Falls et al to the motion to dismiss and remand.

11. Petition for cross-appeal on behalf of the City National Bank of Wichita Falls, E. A. Deaton, its Liquidating Agent, and the City National Bank in Wichita Falls.

12. Order of the Court allowing the cross-appeal.

13. Assignments of Error on behalf of the cross-appeal.

14. Citation and waiver on cross-appeal.

15. This praecipe.

TARLTON, MORROW,
BULLINGTON, HUMPHREY &
KING,
By LESLIE HUMPHREY,
Solicitors for Appellees-Cross-appellants.

Service of the above praecipe is hereby acknowledged, this 13 day of July A. D. 1937.

KILGORE & ROGERS,
By GUY ROGERS,
Solicitors for Appellant, Wichita Royalty Company.
BOONE & DUFF,
By T. R. BOONE,
Solicitors for J. T. Harrell.
ARCH DAWSON,
Solicitor for the Estate and Heirs of G. W. Peckham, deceased and W. H. Peckham.

2384 CLERK'S CERTIFICATE.

United States of America,
Northern District of Texas.

I, GEORGE W. PARKER, Clerk of the United States District Court for the Northern District of Texas, do hereby certify that the foregoing is a true and correct transcript of record, assignments of error and all proceedings in Cause No. 358 In Equity, wherein City National Bank of Wichita Falls, Texas, is plaintiff, and Wichita Royalty Company and E. E. Scannell, Trustee, are defendants, as fully as the same now remain on file and of record in my office at Wichita Falls, Texas, save and except such pleadings and matters as are omitted upon agreement between counsel, with the Original Citation and Acknowledgment of Service, and the Citation on Cross Appeal included herein, in place of copies of same.

Witness my hand officially, and the seal of said Court at Wichita Falls, Texas, this 20th day of July A. D. 1937.

GEO. W. PARKER,
Clerk, United States District Court.

(Seal) By ELIZABETH HALL,
Deputy Clerk U. S. Dist. Court.

Citations omitted from the printed record, the originals thereof being on file in the office of the Clerk of the U. S. Circuit Court of Appeals.

* * * * * * * * *

[fol. 2069] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION

Extract from the Minutes of February 22, 1938

No. 8541

WICHITA ROYALTY COMPANY et al.

versus

CITY NATIONAL BANK OF WICHITA FALLS et al.

(And Reverse Title)

On this day this cause was called, and, after argument by Leslie Humphrey, Esq., and Tarlton Morrow, Esq., for appellees and cross-appellants, and Guy Rogers, Esq., and Ray Bland, Esq., for appellants and cross-appellees, was submitted to the Court.

[fol. 2070] OPINION OF THE COURT—Filed March 23, 1938

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 8541

WICHITA ROYALTY COMPANY et al., Appellants and Cross-Appellees,

versus

CITY NATIONAL BANK OF WICHITA FALLS et al., Appellees and Cross-Appellants

(And Reverse Title)

Appeal and Cross-Appeal from the District Court of the United States for the Northern District of Texas

(March 23, 1938)

Before Sibley and Holmes, Circuit Judges, and Mize, District Judge

SIBLEY, Circuit Judge:

On October 11, 1930, in a State Court, City National Bank of Wichita Falls (herein called the old bank) sued Wichita

Royalty Company and E. E. Scannell, its trustee, to recover on a note and on an indorsement made by them of another note, joining others from whom collateral equitable relief was sought. The above named defendants filed a cross-bill [fol. 2071] asserting a large liability against the Bank for a balance of a deposit account misappropriated by or with the assistance of the Bank. The Bank on a trial prevailed, but on appeal the Supreme Court of Texas sweepingly sustained the contentions of Wichita Royalty Company and Scannell, Trustee, and remanded the case for a new trial, expressly leaving questions of fact open. Wichita Royalty Co. vs. City National Bank, 89 S. W. (2d) 394, 93 S. W. (2d) 143. Meanwhile the Bank, closed by the bank holiday of March, 1933, did not reopen, but a new corporation called City National Bank in Wichita Falls (herein called the new bank) was created which purchased from the old bank its best assets, assuming stated liabilities not including the claim of Wichita Royalty Company. The remaining affairs of the old bank went into the hands of a liquidating agent pursuant to 12 U. S. C. A. §181. No receiver was appointed. Thereafter in May, 1936, the old bank filed an amended petition in the State court, and the Wichita Royalty Company and its trustee Scannell on June 18, 1936, filed what they termed a "third amended original answer, cross-action and intervention in lieu and in amendment of" their former pleadings. This pleading answered the amended petition, restated the cross-demand previously asserted, carrying it back several more years, and then set up the failure and insolvency of the old bank and the establishment of the new bank with practically the same officers, attacked the sale of assets from the old to the new bank and charged that it was designed to defeat the claims of Wichita Royalty Company and to prefer others contrary to the National Banking Act as found in 12 U. S. C. A. §91, and was void. It asserted that these and all other assets of the old bank constituted a trust fund for the ratable payment of all creditors. Malfeasance of the directors was charged. Several additional parties were made including the new bank, the liquidating agent of the old bank and its directors, and the [fol. 2072] administrator of G. W. Peckham, the former trustee of the Wichita Royalty Company. Besides judgment for its demand in a sum of $200,000 and a general accounting between all parties, and general legal and equitable relief, Wichita Royalty Company prayed "that the

old bank be declared to have been insolvent * * * and that its assets be decreed to be a trust fund for the benefit of all creditors * * * that all creditors of the old bank be given notice of the pendency of this suit and permitted to intervene herein * * * and that such fund be ratably distributed between the creditors of the old bank existing at its insolvency." Petitions were at once filed to remove the cause to the federal court on the grounds that the cross-petition was a case for winding up the affairs of a National Bank, and a suit arising under the laws of the United States and involving more than $3,000. Removal being allowed, motions to remand were made asking the remand of the whole cause, and of each separate cause of action involved. These were denied. Repleading was ordered, however. The case was tried and a decree rendered which denied the old bank recovery against Wichita Royalty Company and denied the latter recovery against the old bank; and ordered sale of the remaining assets of the old bank, and retained jurisdiction to wind up its affairs. Appeals taken by each side are before us contesting these judgments.

The case was discussed interestingly in an opinion by the District Judge, but there was no finding of the facts specially, nor a separate statement of conclusions of law as required by Equity Rule 70½. The evidence is long and complicated. A score or more of transactions are contested in the pleadings and evidence. Clear cut findings as to what was done in each and of the knowledge and participation of the bank and its officer Harrell in each are necessary. The opinion goes into no detail but expresses general conclusions [fol. 2073] such as that the court found no dishonest transaction on the part of Peckham, the former trustee, and that the Bank had not sustained its burden as to some matters and the Wichita Royalty Company had similarly failed as to others. We held this an insufficient compliance with the rule in Southwestern Bell Telephone Co. vs. City of San Antonio, 75 Fed. (2d) 880, saying "The contested facts should be put in such detail as will decide each contest concerning them, the purpose of the rule being to aid review by enabling it to be restricted to the exact points on which error is claimed." Complaint is made by the main appellants on this ground; and we find that we should be obliged to study out the whole of this complicated record without the assistance of special fact-findings specifically challenged. We shall remand the cause without allowing costs to either

side that Rule 70½ may be complied with and a new decree entered. But as was done in the case just cited, we shall pass upon some of the major questions of law, as an aid in the further proceedings; and necessarily upon the question of jurisdiction.

There is federal jurisdiction, and remand was rightly refused. The new cross-bill filed by Wichita Royalty Company and Scannell, as trustee and as stockholder, prayed for a collection and restoration of all the assets of the old bank, which was alleged to be insolvent, and for a distribution of them to all creditors. That plainly would be a winding up of the affairs of the old bank. The district court has a special jurisdiction of such a case. 28 U. S. C. A. §41 (16). International Trust Co. vs. Weeks, 203 U. S. 364. It has been held indeed that where no other relief is prayed a state court should not exercise jurisdiction. Birdsey vs. Commercial National Bank, 143 Ga. 627. Removal of such a suit is authorized. 28 U. S. C. A. §71. Lawrence Natl. Bank vs. Rice, 83 Fed. (2d) 642; Bailen vs. Deitrick, 84 Fed. (2d) 375; Studebaker Corporation vs. First National [fol. 2074] Bank, 10 Fed. (2d) 590. It is "a suit of a civil nature arising under the laws of the United States • • • of which the district courts of the United States are given original jurisdiction," within the very words of the removal statute, for a national bank is necessarily wound up under the provisions of the National Bank Act. Davis vs. Elmira Bank, 161 U. S. 275. Moreover the effort to set aside the transfer of the assets to the new bank as violative of 12 U. S. C. A. §91 made it a case arising under the laws of the United States and involving more than $3,000, and hence removable. The laws of the United States are to be directly applied both in testing the validity of the transfer and in ratably distributing all the assets to creditors. Gully vs. First National Bank, — U. S. —, is not to the contrary.

But it is urged that one cause of action, that of the Wichita Royalty Company against the old bank, had been before the state courts for several years and it was too late to remove it, and that the same was true of the suit by the old bank on its notes; and additionally that the old bank could not remove its own suit. It is of course true that neither of these controversies could have been independently removed and neither was sought to be. They come to the federal court as a part of the case asserted by the Wichita Royalty Company in its new cross-bill. That plead-

ing presented for the first time the elements of federal jurisdiction, and there was no delay in removing thereafter. The matters of the insolvency of the old bank and the illegal transfer of its assets and their final disposition might have been made the subject of an independent bill, but Wichita Royalty Company elected to attach them to the pending litigation. It cannot complain that the whole case is thereby rendered removable. It is true that this results in the trial in the federal court of controversies of which there would not otherwise have been federal jurisdiction. The juris- [fol. 2075] diction over them is dependent and ancillary. Hoffman vs. Lynch, 23 Fed. (2d) 518. The situation is like that where in an original suit in a federal court jurisdiction is based on a federal question; but all other matters are to be decided also, even though it turns out that the federal question is not necessary to be decided at all. Green vs. Louisville R. Co., 244 U. S. 499; Siler vs. Louisville R. Co., 213 U. S. 175. Where removal of the whole case is for local prejudice and influence the removal statute, 28 U. S. C. A. §71, expressly provides for a partial remand and it is suggested in Hoffman vs. Lynch, supra, that there may be a discretionary power to make such in other removals. See discussion in Tillman vs. Russo-Asiatic Bank, 51 Fed. (2d) 1023. There was no abuse of discretion here in retaining the whole controversy, because each of the elements bore on the others. In order to collect and distribute the assets of the old bank it would be necessary to try the question whether the note and indorsement sued upon by the bank were valid, as well as whether the bank owed the cross-demands asserted against it. Indeed the insolvency of the bank hangs on the decision, and consequently the validity of the transfer to the new bank. In a practical view, deciding the causes of action involving the federal questions required decision of the others.

After removal, proceedings had in the state court in general stand good until dissolved or modified in the federal court. 28 U. S. C. A. §79, 81. "The Circuit (now District) Court when a transfer is effected takes the case in the condition it was when the State court was deprived of its jurisdiction. The Circuit Court has no more power over what was done before the removal than the State court would have had if the suit had remained there. It takes the case up where the State court left it off." Duncan vs. Gegan, 101 U. S. 810. It is therefore asserted, citing as in point

Williams vs. Conger, 125 U. S. 397, that the opinion of the [fol. 2076] Supreme Court of Texas, which was not followed by the District Judge, is res judicata or at least the law of the case, as it would have been in the State courts. That decision is not res judicata because it was not a final judgment. It affirmed no judgment, but reversed it and directed a new trial. It could not bind the parties (except the liquidating agent) introduced into the case since it was rendered. No doubt it would have been accepted as the law of the case on the same facts upon a retrial in the State court, and ought to have been so regarded in the District Court. But we think that it is not absolutely binding on this court,* though entitled to the great consideration always due the decision of the highest court of the State where the litigation arose, and always accorded to the decisions of that eminent court. This is so because on a second appeal the Supreme Court of Texas could modify or recede from its former opinion if satisfied of its incorrectness;** Messinger vs. Anderson, 225 U. S. 436; Seagraves vs. Wallace, 69 Fed. (2d) 163; and this court is its successor as the appellate tribunal for this case. It has the same power to correct what may be clearly wrong. In searching for the correct rule we should at last be governed as to a question of federal law by the decisions of the Supreme Court of the United States. On a question of general commercial law we should also look to that court since we are answerable to it, remembering that where the true rule is in doubt there may be a leaning to that established by the local decisions. Mutual Life Ins. Co. vs. Johnson, 293 U. S. 335. On a question of purely local law the decisions of the Supreme Court of Texas should govern, whether rendered in this or another case. The main questions here [fol. 2077] relate to the powers of a trustee in respect of

---

* Compare Lovell vs. Southern Ry. Co., 93 Fed. (2d) 377, where this court held itself not bound by a decision on demurrer in the State Court as being the law of the case.

** The readiness of that court to recede from error appears in its complete retraction of its first decision in a case argued and decided with this case. Quanah, A. & P. Ry. Co. vs. Wichita State Bank, 93 S. W. (2d) 701, superseding 89 S. W. (2d) 385.

his trust, and to the liability of a bank for a general deposit of trust funds; and for money misapplied by a depositor by paying it out to the bank itself or on checks to others. No Texas statute applies. The general principles of equity and of commercial and banking law govern. We shall take the middle ground above pointed out. As to Williams vs. Conger, supra, that was a land case in which the State decisions have peculiar weight, and the State decision was used to support rather than control the decision of the federal court. We proceed to set forth our views especially on points not in harmony with those expressed by the Supreme Court of Texas.

In bare outline, what happened was this: In June, 1920, one Robertson executed and recorded a declaration of a trust, naming it Wichita Royalty Company, for the benefit of holders of certificates of ownership, the capital being fixed at $1,000,000 to be raised by selling the certificates. The declaration provides: "The general purposes of this Company are to buy and sell oil and gas royalties and other oil and gas properties." "The entire affairs of this trust shall be managed by one trustee * * * and he may appoint, remove or reappoint such officers, agents and other assistants as he may think best, define their duties and fix their compensation." "The title to all property shall be made and held in the name of the trustee as such trustee." "The trustee shall have full and exclusive power and authority to conduct the business and affairs of this trust, to purchase, etc., any property necessary or proper for the purpose of the trust; to sell and convey all property, etc., to borrow money on the credit of the trust * * * to execute notes therefor * * * and generally to do things which in his judgment are necessary and prudent in the management and conduct of the business of the Company." In the event of vacancy a new trustee is to be appointed [fol. 2078] by the Judge of a named court. "The trustee shall be responsible only for his own wilful and corrupt breach of trust and not for any honest error of judgment." Provision is made for the compensation of the trustee, and for ending the trust and distributing its funds. Robertson, the first trustee, employed Scannell, the present trustee, as his bookkeeper. In 1923 G. W. Peckham was appointed trustee and so continued till his sudden death Nov. 7, 1929. He continued Scannell in charge of his books and records with the title Secretary and Treasurer, though Scannell

owned no certificate. Peckham kept the funds of the trust in the old bank in an account in the name of Wichita Royalty Company. He had also an individual account. He bought and sold oil properties for himself as well as for the trust. His sales to himself as trustee and the transfer of the trust's funds to his own account from time to time make the trouble here complained of. Scannell became trustee Jany. 2, 1930. He had quite full knowledge of Peckham's operations and had signed most of the checks for the trust, detaching and filing vouchers which showed fully what each was for. He had all the deeds and other papers as a Secretary should. After his appointment as trustee he audited the trust, repudiated a few transactions, but undertook expressly to ratify one touching the "Marlborough Addition", (a town lot enterprise), assisted in incorporating it as Texas Investment Company, accepting for the trust its half of the capital stock and becoming himself its president. The notes originally sued on relate to the Marlborough Addition enterprise. It failed a year and a half later, and when the bank sued on the notes Scannell, taking legal advice, repudiated it both as in origin a transaction between Peckham and Peckham as trustee, and as not being within the scope of the trust because not an oil or gas property but city building lots. Various other of Peckham's transactions were also attacked as involving the bank and its [fol. 2079] officer Harrell in liability. Peckham's estate was not sued by Wichita Royalty Company until the last cross-bill was filed June 18, 1936.

We pretermit discussion of Peckham's liability to his trust. A money recovery was held barred in the District Court, and his estate is said to be insolvent.

The liability of the old bank may be considered in three aspects: First, for trust funds received by it on individual debts due by Peckham. Second, for improperly paying out checks drawn on the account of Wichita Royalty Company. Third, for improperly paying checks drawn on Peckham's individual account from trust funds commingled with it. As to the first, the bank is liable to restore to the trust anything paid it directly from the Wichita Royalty Company account for personal debts of Peckham, for it is bound to regard such payments as a direct misapplication of which it is the beneficiary, unless it can show that Peckham because of the then state of his accounts with the trust was

entitled to be paid the money from it and duly charged himself with it. If the bank received payment from his individual account when it contained only trust funds and knew or should have known that it was taking such funds, it must repay them. Atlanta & St. Andrews Bay R. Co. vs. Barnes, — Fed. (2d) —.

As to the second liability the bank was ordinarily authorized and bound to honor checks drawn by authorized persons on the Wichita Royalty Company account. These were mostly signed by Scannell as Secretary and Treasurer, but sometimes by Peckham as trustee. Either was authorized to sign checks. Peckham's sole authority over the trust did not of course extend to the use of its funds for his personal benefit. But checks for money the trust owed him might rightly be made out to him. His salary, to the amount of $30,000 during the six years, was thus paid. He was en- [fol. 2080] titled to compensation by the terms of the declaration of trust, and no attack is made upon the amount fixed or the method of fixing it. It is urged however that he was during much of the time acting unfaithfully and had forfeited his compensation. This may be true on an accounting between him and his trust, but it was not the part of the bank to judge of the faithfulness and diligence of Peckham, and to refuse payment of his salary checks if it thought him unworthy. A case of conspiracy between Peckham and the bank to defraud the trust might charge the bank with liability for honoring these salary checks, but not the mere knowledge of transactions by Peckham which might seem questionable.

Peckham received many checks drawn on the Wichita Royalty Company account in payment for oil and gas properties first acquired in his name or for which he advanced the money. He made a personal profit on some of them. These were finally put in the name of the trust, and when Peckham was paid minute statements of each transaction were entered on the records of the trust, and the purchase of the properties reported to the stockholders, though the fact that they were acquired by or through Peckham himself was not. Some of the purchases proved profitable to the trust and some did not. Scannell, Secretary and Treasurer, was familiar with all the circumstances. In such transactions the trustee was bound to the utmost good faith, he was accountable to the trust for all profits

he made in trades for it, and when he sold to it property which he owned the sale was voidable at the option of the trust. But the Bank was under no such rule of accountability for such transactions to which it was no party. The purchases by the trustee from himself were not void but voidable. Hammond vs. Hopkins, 143 U. S. 224. The bank could not question them. Many of them turned out for the benefit of the trust. Only knowledge of a most bare-[fol. 2081] faced fraud would have justified the bank in refusing to honor a check drawn to Peckham in payment for such property.

Checks drawn on the trust account in favor of the bank itself and by oral direction of Peckham put to his individual credit present a more difficult problem. If the trust owed the bank nothing, the bank should not have received them or should have credited them back to the drawer. Anything the trust owed Peckham should regularly have been paid by check payable to him. That a bank is liable as not having handled the trust account according to duty in crediting to the trustee's individual account checks made payable to the bank itself is held in Robbins vs. Passaic Natl. Bank, 109 N. J., L. 250, 82 A. L. R. 1368. The exact facts concerning each of such checks ought to be ascertained in this case.

Thirdly, the liability of the Bank for paying to others checks drawn by Peckham on his individual account when the payment was made out of trust funds commingled therein is fully discussed and our views expressed in St. Andrew Bay R. Co. vs. Barnes, — Fed. (2d) —. The most recent expression of the Supreme Court of Texas is largely concordant. Quanah A. & P. Ry. Co. vs. Wichita State Bank, 93 S. W. (2d) 701. To raise such a liability it is necessary to show that trust funds were in fact misused, and that the bank actually knew it or had knowledge of such facts as to make its actions in bad faith. We do not subscribe to the doctrine that if the bank knew of one act of misconduct of the trustee it became liable for all subsequent misconducts of the account whether it knew of them or acted in bad faith touching them, or not. The bank must use good faith in honoring checks of a customer who is a trustee, but is liable for money diverted from his trust to others only when, to employ the usual phrase, it knowingly assists [fol. 2082] him to misapply it. Each transaction sought to be thus charged to the bank raises two questions of fact:

Was the trustee in this transaction diverting trust money? Did the bank know he was, or did it know facts which support the sole inference that he was? Of course the recurrence of many suspicious transactions may require that inference when a single one would not. A single known misapplication, even in favor of the bank itself, will not as a matter of law require the bank to discontinue the account or to audit the account each time thereafter it pays a check to see whether it may be paying trust money to one who is not known to be a trust creditor. That the bank thus becomes the guardian of the trust is said to be established by Bischoff vs. Yorkville Bank, 218 N. Y. 106. We doubt if the case goes so far. It lays emphasis on the facts that the personal account was known then to consist wholly of trust funds and that the transactions were such as to indicate a system of defalcations. In the case of U. S. F. & G. Co. vs. Adone and Lobit, 104 Tex. 379, also relied on by the Supreme Court of Texas, the customer cashed a certificate of deposit for $12,000 payable to him as guardian, paid the bank $7,000 on an individual note, and on the same day checked out the balance in his individual name to his brother. The bank was of course held to restore what it got. What was paid to the brother was virtually part of the same transaction and partook of its color, and the bank was held for that also. In Steere vs. Stockyards Natl. Bank, 113 Tex. 287, several times cited, nothing was involved but restoration of what the bank itself took; as is true of Central Natl. Bank vs. Connecticut Mutual Ins. Co., 104 U. S. 67. We do not think the rule of liability as a matter of law for all diversions to others accomplished through the checking account after knowledge by the bank of one, is well supported. The test continues to be for each transaction actual knowledge and good faith under all the circumstances.

[fol. 2083] The investment by Peckham of the trust funds in the purchase of his half interest in the Marlborough Addition, not being oil or gas property, in addition to being voidable as a transaction with himself, appears to be beyond the scope of the trust. Scannell, well knowing the facts though he says he did not know the law arising on them, when he became successor trustee did all he could to ratify and adopt and reorganize this transaction, and persisted in it for more than a year. He made the note and indorsement upon which the old bank is now suing. He could waive the pre-

sumed fraud in the purchase by Peckham as trustee from himself, but as respects authority to buy town lots for the trust Scannell had no more power to ratify than Peckham had to invest. We do not perceive how the trust, whose scope was apparent from the public records, could be bound for moneys knowingly advanced to this town lot enterprise by the bank, unless Scannell's adoption of it was for the purpose of saving the trust's money already invested in it by Peckham, he being dead insolvent. Perhaps this would have been an authorized business of the trust, just as a National Bank prior to 1916 might take land to save a doubtful obligation though it could not lend on it originally. Unless the facts support some such extraordinary power, it would seem that Scannell has not bound the trust by his signatures in this connection. Whether he has bound himself is another question.

The liabilities of Harrell are similar to but not identical with those of the bank. Whatever he got personally of trust funds as to which he is not a bona fide purchaser without notice he must restore. What he as the bank's agent took for the bank he is responsible for only if he knowingly aided in a diversion. A like rule would apply where he is sought to be held along with the bank for paying Peckham's individual checks out of trust funds.

[fol. 2084] We decide nothing on the question of limitation. We have not sought to develop all questions of law and we have not attempted to adjudge any question of fact. The facts we leave open for full determination in the District Court, with power in its discretion to hear further evidence where it is thought necessary to reach the truth. The sale of the old bank's assets may stand.

The decree is accordingly reopened except as to the sale of the old bank's assets, and the cause is remanded for further proceedings not inconsistent with this opinion, without costs of appeal allowed to either party.

[fol. 2085] JUDGMENT

Extract from the Minutes of March 23rd, 1938

No. 8541

WICHITA ROYALTY COMPANY et al.

versus

CITY NATIONAL BANK OF WICHITA FALLS et al.

(And Reverse Title)

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Texas, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause be, and the same is hereby reopened except as to the sale of the old bank's assets; and that this cause be, and it is hereby, remanded to the said District Court for further proceedings not inconsistent with the opinion of this Court, without costs of appeal allowed to either party.

[fols. 2086-2087] PETITION FOR REHEARING—Filed April 11, 1938

NO. 8541

IN THE

United States Circuit Court of Appeals

FIFTH CIRCUIT
NEW ORLEANS, LOUISIANA

WICHITA ROYALTY COMPANY ET AL., *Appellants,*

versus

CITY NATIONAL BANK OF WICHITA FALLS, TEXAS, ET AL., *Appellees.*

(And Reverse Title)

Appealed from the District Court of the United States for the Northern District of Texas Wichita Falls Division

---

MAY IT PLEASE THE COURT:

Wichita Royalty Company moves the Court for a Rehearing upon the matter of costs, and respectfully shows:

1. That the $5,272.50 to print the record was paid by Wichita Royalty Company.

2. That the Clerk was paid his fees by Wichita Royalty Company.

3. That the Bank appealed its case upon the record of Wichita Royalty Company and at the expense of Wichita Royalty Company.

4. That the rules of Court require an order allowing costs to the prevailing party on appeal, unless otherwise directed and the cause was remanded upon an opinion satisfactory to the trust.

5. That the law of the case was held binding on the trial court, and the remand was made necessary by the trial court's failure to find facts specially.

Unless the Court contemplates withholding the allowance of costs pending a new decision, permitting the trial court to adjudge costs of appeal, then it seems Wichita Royalty Company should be allowed its costs, or in any event, they should be divided.

Respectfully submitted,

RAY BLAND,
GUY ROGERS,
Attorneys for Wichita Royalty Company.

KILGORE & ROGER,
Of Counsel.

[fol. 2088] ORDER DENYING REHEARING

Extract from the Minutes of April 18th, 1938

No. 8541

WICHITA ROYALTY COMPANY et al.

versus

CITY NATIONAL BANK OF WICHITA FALLS et al.

(And Reverse Title)

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

[fols. 2089-2093] PETITION FOR LEAVE TO FILE PETITION FOR REHEARING AND PETITION FOR REHEARING—Filed May 23, 1938

NO. 8541

IN THE

United States Circuit Court of Appeals

FOR THE FIFTH CIRCUIT, AT NEW ORLEANS

WICHITA ROYALTY COMPANY ET AL.,
Appellants and Cross-Appellees,

versus

CITY NATIONAL BANK OF WICHITA FALLS ET AL.,
Appellees and Cross-Appellants.

PETITION FOR LEAVE TO FILE MOTION FOR REHEARING

TO SAID HONORABLE COURT:

In view of the Supreme Court's decision April 25th, 1938, in *Erie Railroad Company v. Thompkins*, 82 L. Ed. 787, Law Edition Advance Sheet opinions of May 9, 1938, being subsequent to the decision in this case, changing the rule of law to be pronounced and applied by Federal Courts, making the law of the State the law of the case, and since this Court may control its de-

cisions during the term at which they are rendered (Hughes Federal Practice, Sec. 3631, Vol. 6, Page 153; *Davis v. Preston*, Tex. Com. App., 35 S. W. (2d) 403), request is made that Appellant be permitted to file the Motion tendered herewith.

Respectfully submitted,

RAY BLAND,
GUY ROGERS,
Wichita Falls, Texas.

By .....

Of Counsel:
KILGORE & ROGERS,
Wichita Falls, Texas.

NO. 8541

IN THE

United States Circuit Court of Appeals

FOR THE FIFTH CIRCUIT, AT NEW ORLEANS

WICHITA ROYALTY COMPANY ET AL.,
Appellants and Cross-Appellees,

versus

CITY NATIONAL BANK OF WICHITA FALLS ET AL.,
Appellees and Cross-Appellants.

(And Reverse Title)

MOTION FOR REHEARING

MAY IT PLEASE THE COURT:

Apellant - Appellee, Wichita Royalty Company, moves the Court to withdraw and/or amend its mandate and to change its opinion so that the rules set forth by the Supreme Court of Texas *in this very case* will be pronounced as the law of the case. Such is the present rule pronounced by the Supreme Court of the United States in *Erie Railroad Company v. Tompkins*, 82 L.

Ed. 787, Law Edition Advance Opinions of May 9, 1938. This opinion holds:

> "Except in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in any case is the law of the State. And whether the law of the State shall be declared by its Legislature in a statute or by its highest court in a decsiion is not a matter of federal concern."

The Court in this case has decided certain principles of commercial law, differing in certain respects from the decision of the Supreme Court of Texas *in this very case*. These rules are laid down for the guidance of the District Court on the retrial of the case. Whether or not they are binding may become a question, the rule now being that the law of the state is the law of the case.

Since the Supreme Court of the United States has changed the rule of decision subsequent to the rendition of judgment herein, making the law of the state the law of the case, this Court should recall its mandate and so amend the same as to make the law as decided by the Supreme Court of Texas the law of the case, thus conforming to the present federal law.

This Court would follow the Supreme Court of the United States on a second appeal. There is no necessity of awaiting the possibility of a second appeal in order to apply the law as pronounced by the Supreme Court of the United States. This case has been in the Courts for seven years. Anything this Court can do to hasten a final and correct judgment should be done.

While we recognize that we may not file this motion as a matter of right, yet this Court still has control over its judgments until the end of the term. *Hughes Federal Practice*, Section 631, Volume 6, p. 153; *Davis v. Preston* (Tex. Comm. App.) 35 S. W. (2d) 403.

Respectfully submitted,

RAY BLAND,
GUY ROGERS,
Wichita Falls, Texas.

By

Of Counsel:
KILGORE & ROGERS,
Wichita Falls, Texas.

[fol. 2094] OPINION ON SECOND MOTION FOR REHEARING—
Filed June 10, 1938

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 8541

WICHITA ROYALTY COMPANY et al., Appellants and Cross-Appellees,

versus

CITY NATIONAL BANK OF WICHITA FALLS et al., Appellees and Cross-Appellants

(And Reverse Title)

Appeal and Cross-Appeal from the District Court of the United States for the Northern District of Texas

On Motion for Second Rehearing

(June 10, 1938)

Before Sibley and Holmes, Circuit Judges, and Mize, District Judge

SIBLEY, Circuit Judge:

A motion for rehearing made in due time was overruled and the mandate sent down. The present motion, not within our rules on the subject, is based on the extraordinary ground that whereas the Supreme Court in Erie Railroad [fol. 2095] Company vs. Tompkins, — U. S. —, and cases following it, has established that in reference to transactions governed by the law of a State the decisions of the Supreme Court of that State are to be followed in the federal courts, though no State statute is involved and notwithstanding the question is one of what has heretofore been referred to as "general law", in the decision in this case we have not followed the decision of the Supreme Court of Texas made on this very case.

The term at which our judgment was rendered has not closed and we have power to recall the mandate and rehear the case, though too late under our rules regularly to do so.

We have committed ourselves in this case and in Seagraves vs. Wallace, 69 Fed. (2d) 163, to a liberal view of the rule of the law of the case, whereby the appellate court may and should correct plain error in its own decisions in a litigation until that litigation is finally closed. We would therefore on a later appeal in this litigation be faced with a re-examination of what we have said, and we may as well face it now. We accordingly have considered this motion on its merits, as though made in time; and the state of the decisions of the Texas Supreme Court having already been fully argued and nothing being proposed to be added on that score, we find no occasion to change our conclusions or to grant a rehearing to that end.

We of course retract anything in the opinion that may indicate a purpose not to be bound by the law of Texas as established by the decisions of the State courts. We think we have arrived at proper conclusions under the law of Texas, though we did not wholly accept the opinion in this case, — Tex. —, 89 S. W. (2d) 394, written by the Commission of Appeals. We adhere to our view that as to that opinion, since by removal of the litigation to the federal courts we have become the appellate court therefor, we have the same right [fol. 2096] and duty to declare or redeclare the law of this case that the Supreme Court of Texas would now have if the case had not been removed. We believe the Supreme Court of Texas would probably agree with our conclusions in view of what it has since done. The case of Quanah A. & P. Ry. Co. vs. Wichita State Bank, — Tex. —, 89 S. W. (2d) 385, was considered along with that of The Wichita Royalty Company and decided at the same time by the Commission of Appeals. Both decisions held the bank to a strict liability such as Wichita Royalty Company contends for. On rehearing the Quanah case the Supreme Court withdrew entirely the opinion, and on elaborate examination of the general authorities decided the contrary and established as the law of Texas the rules applied generally elsewhere, — Tex. —, 93 S. W. (2d) 701. This demonstrates that there is no peculiar law in Texas on this subject. Indeed, by statute of Texas the common law as declared in the United States was in 1840 made of force, except as the legislature might alter it. Civil Stats. of 1925, Art. 1; Grigsby vs. Reib, 105 Tex. 597, 153 S. W. 1124; Great Sun Life Ins. Co. vs. Austin, 112 Tex. 1, 243 S. W. 778. The opinion in the Wichita Royalty Company case was reviewed and explained as "an action where it

was charged that the bank actively participated in the spoliation of the trust fund and knowingly received a part of the fund to itself in payment of the trustee's individual debt to it." We have held the bank liable in so far as it did that. Since in the Quanah case the Supreme Court holds that the law of Texas is what for want of a better term we may call the general law on the subjects involved here, and accordingly adopts rules generally followed in other States, we [fol. 2097] think our conclusions are in line with the law of Texas and that there is no occasion for a rehearing.

Rehearing denied.

[fol. 2098] ORDER DENYING SECOND MOTION FOR REHEARING

Extract from the Minutes of June 10th, 1938

No. 8541

WICHITA ROYALTY COMPANY et al.

versus

CITY NATIONAL BANK OF WICHITA FALLS et al.

(And Reverse Title)

It is ordered by the Court that the second petition for rehearing filed in this cause be, and the same is hereby, denied.

[fol. 2099] CLERK'S CERTIFICATE

UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

UNITED STATES OF AMERICA:

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 2069 to 2098 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 8541, wherein Wichita Royalty Company, et al., are appel-

lants and cross-appellees, and City National Bank of Wichita Falls, et al., are appellees and cross-appellants, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record, Volumes I, II, and III, numbered from 1 to 2068 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 22nd day of July, A. D. 1938.

Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals, Fifth Circuit. (Seal United States Circuit Court of Appeals, Fifth Circuit.)

[fol. 2100] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 17, 1938

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.